

1 Brian Burke, *Pro Per*  
2 145 EAST 23<sup>RD</sup> STREET APT. 4R  
3 NEW YORK, NY 10010  
4 646-434-8513  
5 BRIANTBURKE@GMAIL.COM

6 UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF NEW YORK

9 BRIAN BURKE, Plaintiff,

11 vs.

12 NEW YORK CITY TRANSIT

13 AUTHORITY, NYP Holdings,

14 Inc., KRISTEN NOLAN, esq.,

16 LEONARD AKSELROD, KATHIANNE

17 BONIELLO, JOHN/JANE DOE, *ET*


19 *AL.*, Defendants

Case# 15-cv-1481(ENV) (LB)

AMENDED COMPLAINT AND  
AFFIRMATION  
JURY TRIAL DEMAND

22 INTRODUCTION

23 I declare, certify, verify, and state under penalty  
24 of perjury that the foregoing is true and correct.

26 Executed on Friday June 26, 2015 

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 1

ORIGINAL  
★FILED★

2015 JUN 26 PM 8:27

CLERK  
U.S. DISTRICT COURT  
AFTER

ORIGINAL

1 This is an action to remedy the rights of Brian  
 2 Burke under 18 U.S.C 1964, 42 U.S.C 1983, 115 Stat 272,  
 3 NYPL part 4 title X sec 460-460.8, Chapter 96, 18  
 4 U.S.C. § 1961-1968, Pain and Suffering, Joint & Several  
 5 Liability, Vicarious Liability, Respondeat Superior,  
 6 Law of Agency, Tortious Interference With Prospective  
 7 Economic Advantage, Fraud, Wage Theft, Defamation,  
 8 Libel, Slander, Malicious Falsehood, Intentional  
 9 Infliction of Emotional Distress, Perjury, Subornation  
 10 of Perjury, Obstruction of Justice, Jury Tampering,  
 11 Covenant of Good Faith and Fair Dealing, Theft of  
 12 Honest Services, N.Y. ADC. LAW § 8-603, U.S.C. Title  
 13 29, Chapter 7, subchapter IV § 185, Title VII 42 U.S.C.  
 14 §§ 2000e, U.S.C Title 42 Chapter 29 § 1981, 42  
 15 U.S.C. §§ 121111-12117, 42 U.S.C. §§ 121311-121655, 42  
 16 U.S.C. §§ 121811-121899, 42 U.S.C. §§ 12201-12213,  
 17 U.S.C. Title 6 Chapter 4 Subchapter III § 1142, 29  
 18 U.S.C. § 621- § 634, **Article V, Section 6 of the New**  
 19 **York State Constitution, Amendment I to the United**  
 20 **States Constitution**, New York State CVS-Civil Service,  
 21  
 22  
 23  
 24  
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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 2

1 and all other applicable New York State or Federal  
2 Statutes or common law, subject to amendment.  
3

4 Malicious, concerted, terroristic, dangerous, unlawful  
5 activity, orchestrated by the NYCTA Department of Law,  
6 resulting in a hostile workplace and a PTSD, mixed  
7 anxiety depression disorder diagnosis, for reasons  
8 primarily of retaliation, makes this suit necessary.  
9  
10

#### 11 JURISDICTION & VENUE

12 This Court has Jurisdiction pursuant to the  
13 following Statutes; 28 U.S.C. § 1331, 28 U.S.C. § 1343  
14 and 28 U.S.C. § 1367. Venue is appropriate in this  
15 judicial district as the events that gave rise to this  
16 Complaint occurred in this district.  
17  
18

#### 19 JURY DEMAND

20 A jury trial is demanded under the Seventh  
21 Amendment to the Constitution of the United States and  
22 Fed. R. Civ. P. 38.  
23  
24

#### 25 REFERAL TO MAGISTRATE

26 Petitioner agrees to referral to Federal Magistrate  
27 Judge Lois Bloom by presiding District Judge Eric N.  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 3

1 Vitaliano, for all purposes, in the interest of  
2 judicial economy, see attached. If any defendants  
3 disagree, Petitioner understands non-dispositive  
4 motions will be decided by Judge Bloom as well as a  
5 report and recommendation on dispositive motions.  
6  
7

8  
9  
10 **PARTIES**

11 Plaintiff is a 53 year old citizen of the United  
12 States, 14 year Train Operator for the New York City  
13 Transit Authority (hereon in NYCTA). He has resided in  
14 New York County, New York for over a quarter century,  
15 has never been arrested or charged with any crime and  
16 has been regularly and randomly drug and alcohol tested  
17 as recently as 03/11/2015.  
18  
19

20 **Qui facit per alium facit per se**

21  
22 NYCTA is the employer at issue. All individuals,  
23 other than Kathianne Boneillo, yet known and unknown,  
24 involved in the unlawful concerted adverse job actions  
25 work for the same. NYCTA is a public entity pursuant to  
26 42 U.S.C §12131, etc. NYCTA resides at 130 Livingston  
27  
28

1 Street, Brooklyn New York, within this Court's  
2 Jurisdiction. NYCTA receives federal funds.

3  
4 NYP Holdings, Inc., doing business as New York  
5 Post, published a maliciously false, defamatory,  
6 libelous, slanderous, damaging hit piece on Sunday,  
7 March 29, 2015 about this case, and others, in order to  
8 potentially obstruct justice and falsely influence a  
9 prospective jury and otherwise harm Petitioner.  
10  
11 Kathianne Boneillo was credited as the Author, but, on  
12 information and belief, Kristen Nolan was the actual  
13 author.  
14  
15

16 **DEPRAVATION OF RIGHTS UNDER COLOR OF LAW**  
17

- 18 1. On February 26, 2001, Petitioner was hired  
19 as a safety sensitive Train Operator by the  
20 New York City Transit Authority, off an open  
21 competitive civil service list, scoring 97.5  
22 out of 100 and passing all requirements.  
23  
24 Plaintiff noticed the NYCTA medical  
25 department of the pre-existing conditions of  
26 myopia and photophobia and supplied medical  
27  
28

1 documentation of the same, as per rule<sup>1</sup>.

2 Petitioner has been required since to wear  
3 the correct corrective lenses while  
4 operating a train and has done so since  
5 hiring date.  
6  
7

8 2. In 2005 Complainant became a Shop Steward  
9 for Transport Workers Union, Local 100 and  
10 in 2009 was elected a Delegate and appointed  
11 a contractual Safety Representative in 2010.  
12

13 3. In 2008 Plaintiff filed U-28203 with the New  
14 York State Public Employment Relations Board  
15 against NYCTA, due to unsafe, harassing,  
16 distracting activity by Train Service  
17 Supervisor (hereon in TSS) Lobianco.  
18  
19  
20  
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23

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24 <sup>1</sup> Rule 11(o) "Any employee who requires tinted eyeglass  
25 lenses for medical reasons, must submit a certificate from  
26 his/her physician or eye specialist and must report to the  
27 Occupational Health Services, with the tinted eyeglasses, and  
28 must submit to an eye examination." This was complied with in  
March 2001 by submitting a certificate by the head of the  
Department of Ophthalmology at Beth Israel Medical Center, C.  
Michael Samson, M.D.

1           4.       Approximately once a month TSS Lobianco,  
2                    Petitioners assigned TSS<sup>2</sup>, would enter the  
3                    operating cab and proceed to harass,  
4                    threaten, mock, interfere and distract Train  
5                    Operator Brian Burke while train was in  
6                    motion. This was also reported to Transit  
7                    and Federal EEOC.

8  
9  
10  
11          5.       Ms. Kristen Nolan, esq. was Counsel for the  
12                    Authority at the PERB settlement in 2008.  
13                    Ms. Nolan became aware of Complainant's  
14                    corrective lens requirement at that time.

15  
16          6.       At the 2008 settlement hearing ALJ Philip  
17                    Meier negotiated a written settlement  
18                    agreement between NYCTA General Counsel  
19                    Martin B. Schnabel, Kristen Nolan and  
20                    Complainant. The harassment by TSS Lobianco  
21                    ceased.

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25  
26                    

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<sup>2</sup> All hourly workers in Rapid Transit Operations are  
27 assigned to a TSS each pick, i.e. twice yearly and each TSS has  
28 approximately 30 assignees. The assigned TSS performs all  
investigations of assignees.

1           7.       In 2011 in Concourse Yard, Bronx, Petitioner  
2                   was the witness to a confrontation between  
3                   Train Operator Estes, a proud African-  
4                   American Air Force Veteran, and TO Daniel C.  
5                   of Irish-Catholic ethnicity.  
6

7  
8           8.       Plaintiff was ordered by then Line  
9                   Superintendent O'Toole to write a written  
10                  report on the event.  
11

12          9.       Various employees suggested Petitioner lie  
13                   and cover-up malfeasance by TO Daniel C.,  
14                   presumably to have Complainant avoid  
15                   harassment, hostility and adverse job  
16                   actions to come, but this was not done. TO  
17                   Daniel C. was forced to retire.  
18

19  
20          10.      After writing correct EEOC document and  
21                   supporting TO Estes version of events  
22                   adverse job actions in assignments started  
23                   occurring on a daily basis.  
24  
25  
26  
27  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 8



1           11.       For 10 years at that point, Complainant  
2                   picked the 'extra list'.<sup>3</sup> As retaliation,  
3                   the Authority started assigning only less  
4                   senior road jobs to, now senior on the list,  
5                   TO Burke. A grievance was filed and  
6                   Complainant was forced to pick off the list.

7  
8  
9           12.       In August 2012, in order to cease adverse  
10                   job assignments, Petitioner accepted a  
11                   promotion to Train Dispatcher.

12  
13           13.       As Train Dispatcher, Petitioner discovered  
14                   that he would be getting lower pay than as a  
15                   Motorman and would be on an illegal 2 year  
16                   probation<sup>4</sup>. Petition requested as of right  
17                   voluntary demotion to previous Civil Service  
18                   title.  
19  
20  
21  
22  
23  
24

25           <sup>3</sup> Specifically extra list north, PM shift. This was done so  
26           Petitioner could work more senior jobs, such as yard and  
27           switching, that are normally worked by more senior employees.

28           <sup>4</sup> The NYCTA, in violation of NYS Civil Service Law and  
            promotion letter sent to Complainant, insisted on unlawful two  
            year probation.

1       14.       Petitioner resumed newly picked B-line road  
2                   job, which started in Concourse Yard, in  
3                   December 2012.

4  
5       15.       On first day back and for the next six  
6                   months Assistant Train Dispatcher Odums  
7                   proceeded to harass Complainant at every  
8                   sign in. Some, but not all, of this  
9                   harassment was recorded.

10  
11  
12       16.       All hourly (Train Operators, Conductors,  
13                   Tower Operators) RTO NYCTA employees are  
14                   required to read bulletins, memoranda,  
15                   notices, general orders and transit related  
16                   news items<sup>5</sup> for the first 15 minutes of  
17                   every tour, i.e. 'bulletin time', at sign in  
18                   location where the same are posted.

19  
20  
21  
22       17.       On first day back ATD Odums denied pay to  
23                   return a transit radio, while ordering work  
24

25  
26  
27       <sup>5</sup> These would, and did, include the 03/29/15 Post article,  
28       also available online at MTA Today, a widely read employee only  
      intranet.

1 to be performed free and was extremely  
2 hostile and harassing.

3  
4 18. In 2013 ATD Odums harassment, retaliation  
5 and hostility only increased.

6  
7 19. Complainant, as a Safety Representative,  
8 attempted to and did in fact call Vice  
9 President Kevin Harrington of Local 100 to  
10 report a grave unsafe condition in Concourse  
11 Yard Barn<sup>6</sup>. ATD Odums interrupted call for  
12 no legitimate reason and ordered plaintiff  
13 to never use transit phones for any  
14 purpose<sup>7</sup>.

15  
16  
17  
18 20. On other occasions ordered Plaintiff to not  
19 stand in front of desk to sign in, an  
20 impossibility.  
21

22  
23 <sup>6</sup> Complainant, while walking to his train, observed the  
24 safety chains that chock the trains in the barn were unpainted,  
25 i.e. camouflage, and would, if missed, derail train. This is a  
26 violation of Bulletin and wildly unsafe. It was successfully  
reported and remedied much later.

27 <sup>7</sup> Petitioner, had recently completed all training for a  
28 higher title, Train Dispatcher, and knew ATD Odums had no legal  
right to order that, nevertheless followed the motto "comply and  
grieve".

1       21.     Petitioner was uniquely told he could not  
2             use NYCTA microwave by Mr. Odums.

3  
4       22.     Same for NYCTA toaster by ATD Odums.

5       23.     Uniquely ordered not to use NYCTA  
6             refrigerator at sign in location, by Mr.  
7             Odums.

8  
9       24.     Blocked from talking to Local 100 Tower  
10            Operator, in violation of first amendment  
11            and "Taylor Law", by Mr. Odums.

12  
13       25.     Told he could not sit in NYCTA chairs when  
14             reading Bulletins, etc., by Mr. Odums.

15  
16       26.     On 02/13/2013 (Ash Wednesday) Complainant  
17             arrived at work after mass with a cross of  
18             ashes on his forehead. ATD Odums made a  
19             number of rude and racist comments directed  
20             at Petitioner, including comparison with a  
21             hindu woman and a rant on Catholics  
22             violating his same-sex rights.

23  
24  
25  
26       27.     Blocked from using NYCTA cups to drink water  
27             by ATD Odums.  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 12

1 28. Blocked from being able to drink NYCTA water  
2 by ATD Odums.  
3

4 29. Told his face looked like a woman had a  
5 yeast discharge on it by ATD Odums.  
6

7 30. Other statements too inflammatory to print.

8 31. Petitioner filled new PERB (U-32637) and NYS  
9 Human Rights cases against NYCTA under  
10 Vicarious Liability Doctrine.  
11

12 32. Kristen Nolan, esq. filed three perjurious  
13 sworn Affidavits purportedly signed by ATD  
14 Odums.  
15

16 33. Petitioner filed a Notice of Claim in 2012  
17 against the NYCTA.  
18

19 34. Ms. Nolan sent a request for a Statutory  
20 Hearing (deposition) under NY Code 50-h by  
21 certified letter, as required.  
22

23 35. Originally scheduled for September 25, 2012,  
24 it took place on February 27, 2013 at 1pm.  
25 Ms. Nolan questioned Complainant for the  
26 rest of the afternoon and was again made  
27  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 13

1 aware of corrective lens need. No copy of  
2 transcript was to this day given to  
3 Deponent, in violation of NY Code 50-h.  
4

5 36. Petitioner, in order to stop brutal  
6 harassment by ATD Odums, was required to,  
7 and did in fact 'pick off' the B line and  
8 picked a job with more cab time and an  
9 otherwise more difficult schedule. That  
10 harassment ended in June 2013 only because  
11 Mr. Odums had no more access to do so.  
12  
13  
14

15 37. Appearing at PERB settlement hearing at 55  
16 Hanson Place, in front of ALJ Angela  
17 Blassman in November 2013, Ms. Nolan was  
18 again made aware of petitioners corrective  
19 lens requirements.  
20  
21

22 38. After returning to work as a Train Operator  
23 in December 2012, the Authority continued to  
24 deduct dues for the supervisors union for  
25 months.  
26  
27  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 14

1           39.       After returning to TO title the Authority  
2                   refused to deduct TWU Local 100 dues, in  
3                   violation of contract, state law and  
4                   automatic dues check off stipulation/Court  
5                   Order, for years. This was done to place  
6                   Complainant in bad standing with Union.

7  
8  
9           40.       On January 17, 2013, Leonard Akselrod, head  
10                   of Labor Relations, turned off, without  
11                   notice, Petitioners employee pass.  
12                   Nevertheless, Mr. Akselrod ordered Burke to  
13                   do job without proper means in violation of  
14                   contract and safety. A 'Safety Dispute  
15                   Resolution Form' was requested of Mr.  
16                   Akselrod, who did not comply in violation of  
17                   Bulletins, NYCTA Rules, etc.. Mr. Akselrod  
18                   is tasked with enforcing said rules and  
19                   fires employees daily for less severe  
20                   violations.  
21  
22  
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26           41.       On March 27, 2014 a PERB hearing for U-32637  
27                   took place. ATD Odums testified, and it was  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 15

1 clear, additionally perjured himself. Ms.  
2 Nolan was present and again witnessed  
3 Plaintiff's corrective lenses requirement.  
4

5 42. On April 11, 2014 a PERB settlement hearing  
6 for a different case not involving Mr. Odums  
7 (U-33283) but wherein the Authority refused  
8 to recognize Petitioner as a Shop Steward,  
9 or acknowledge that the position exists at  
10 all, or to allow Petitioner to identify  
11 himself as a Shop Steward to Union Members  
12 at work during lunch, etc., in violation of  
13 2008 Stipulation, the Taylor Law, etc., took  
14 place. Ms. Nolan again represented the  
15 Authority.  
16

17 43. In 2007 Complainant filed an 'et al.'  
18 grievance regarding overtime pay for  
19 training on regular days off. Grievant  
20 prevailed in front of arbitrator Richard  
21  
22  
23  
24  
25  
26  
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28



1           Adelman.<sup>8</sup> This victory cost the Authority  
2           approximately \$1,000,000.  
3

4           44.     Petitioner has approximately a dozen  
5           grievances the Authority refuses to hear and  
6           have been pending for years.  
7

8           45.     On April 14, 2013, according to testimony by  
9           Labor Relations Director Akselrod at a NY  
10           WCB hearing, Ms. Nolan received a  
11           coincidental epiphany or second sight.<sup>9</sup> She  
12           called Mr. Akselrod and the brutal, unsafe  
13           harassment of whistleblower Burke rose to an  
14           unprecedented level.<sup>10</sup>  
15  
16  
17  
18

19           <sup>8</sup> NYCTA fired Mr. Adelman in 2013 to avoid losing another  
20           substantial *et al.* grievance by Burke regarding seniority and  
21           bid rights of open yard and switching jobs being worked by  
22           rookies in the YX program. This grievance is still pending.

23           <sup>9</sup> Ms. Nolan was told by Burke on workday prior that the  
24           Odums affidavits she submitted, and presumably wrote, were  
25           likely suborned. This issue is being investigated by Brooklyn  
26           District Attorneys Office, referred by MTA Inspector General.

27           <sup>10</sup> The specific horrific harassments orchestrated by  
28           Defendants Nolan and Akselrod have never occurred in the 100+  
29           prior years of the subways. The presumptive harassment,  
30           distraction, interference, hostility of having 5 supervisors  
31           serially attack a train operator while operating was considered  
32           too dangerous. The WCB transcripts are in possession of the  
33           Authority and a discovery request. Transit has not complied with  
34           26(f) conference request or initial disclosures.

1           46.       Anonymous calls to D line Dispatcher were  
2                   made to locate Burke.

3  
4           47.       Mr. Grieves, Burke's assigned TSS, was  
5                   working on Monday and Tuesday, April 14 and  
6                   15, 2014. He was not contacted regarding  
7                   false malicious 'complaint' by Ms.  
8                   Nolan,<sup>11</sup>as was procedure and precedent. He  
9                   would have refused to harass Burke, if  
10                  directed to do so.

11  
12  
13           48.       On April 14, 2013, a TSS, unknown to this  
14                   day, entered Petitioners operating cab  
15                   without cause after verifying that Burke was  
16                   in compliance with all rules and regulations  
17                   from outside the cab.<sup>12</sup>He proceeded to  
18  
19  
20  
21

22           <sup>11</sup> Ms. Nolan's second sight resolved that Burke, a then 13  
23           year Train Operator with a perfect safety record, must be  
24           operating trains without wearing the correct required glasses.  
25           Ms. Nolan had never seen Petitioner operate but knew of  
26           corrective lens requirement and was given copy of certificate  
27           years prior. This violation of ADA was the pretext, see **Reeves**  
28           **v. Sanderson Plumbing Products, Inc.**, 530 U.S. 133 (2000)

<sup>12</sup> There is an 18 page procedure, 'efficiency tests', that  
are regularly performed to catch unsafe activity. Subway crew  
are observed outside the cab, from the platform, and if in  
violation are taken out of service and if not in violation, the

1 harass, threaten with false write-ups and  
2 otherwise evidence extreme hostility and  
3 intimidation. Ms. Nolan was aware of  
4 Complainants extreme dislike and fear of  
5 exactly this behavior due to prior ordeal  
6 involving Mr. Lobianco.  
7

8  
9 49. On the second interval on Monday, April, 14,  
10 2014, a second unknown TSS entered operating  
11 cab and performed slightly greater  
12 harassment and unsafe activity.  
13

14  
15 50. On Tuesday, April 15, 2014, Ms. Nolan and  
16 Mr. Akselrod, instead of dropping  
17 harassment, which at that point failed,  
18 doubled up. Burke was found to be in  
19 compliance with all safety rules on Monday  
20 but that was just a pathetic ADA violating  
21 pretext. The hostile harassment should have  
22 stopped but was only getting started.  
23  
24  
25  
26

27  
28 TSS observes the next train. This was not done, as Ms. Nolan's  
false complaint was pretext for the criminal harassment.

AMENDED COMPLAINT AND AFFIRMATION

1           51.       Over the course of the day and on all three  
2                   intervals, three TSSs serially entered cab,  
3                   after verifying that Burke was not violating  
4                   rules, and proceeded to assault, threaten,  
5                   intimidate and harass the whistleblower  
6                   until a panic attack occurred at the end of  
7                   the day.  
8

9  
10  
11          52.       On April 16, 2014, a day off for Burke to  
12                   attend monthly union meeting, the attached  
13                   letter was sent to Barry Kluger, MTA  
14                   Inspector General, by email and regular  
15                   mail.  
16

17  
18          53.       On April 17, 2014 Burke reported to work and  
19                   then filed an 'Injury On Duty' (IOD) and  
20                   Safety Dispute Resolution Form as stated in  
21                   letter.  
22

23          54.       Diagnosis of PTSD by Dr. Xao, Dr. Kuhn, Dr.  
24                   Sherman, as well as mixed anxiety/depression  
25                   disorder ensued. This was caused by the  
26  
27  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 20

1 concerted activity of Ms. Nolan and Mr.  
2 Akselrod.  
3

4 55. At first WCB hearing, Mr. Greaves appeared  
5 for the Authority, and when the Authority  
6 realized Mr. Greaves would not perjure  
7 himself, i.e. "play ball", he was dismissed  
8 prior to testimony and hearing rescheduled.  
9

10 56. At later WCB #G1100520 hearing the three  
11 'Tuesday' TSSs, but for some reason not the  
12 Monday 2, testified. Their perjury was  
13 clearly coached and suborned.<sup>13</sup> The hearing  
14 transcripts are in possession of the  
15 Authority. Petitioner cannot afford the  
16 various PERB or WCB transcripts or the  
17 hiring of counsel due to unlawful  
18 withholding of wages and benefits and  
19 unlawful concerted activity by defendants.  
20  
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26  
27 <sup>13</sup> The Perjury and Subornation of testimony at WCB hearing  
28 regarding 2014 injury (G1100520) and false material information  
by NYCTA from 2015 case (G1278038) are being investigated by NYS  
Inspector General Catherine Leahy Scott.

1           57.       The NYCTA withheld 2014 vacation and sick  
2                   pay, in violation of state laws and  
3                   contract. This was later paid after  
4                   grievances and importuning by Union.  
5

6           58.       The NYCTA withheld '60%' sick pay. This is a  
7                   contractual right of sick pay at 60% of  
8                   normal pay when accumulated sick pay runs  
9                   out. This was the adverse job action by the  
10                  Authority that OSHA was investigating as  
11                  retaliation. The Authority did in fact pay  
12                  this, 6 months late, at OSHA insistence and  
13                  OSHA complaint is now withdraw due to  
14                  compliance.  
15

16           59.       Complainant was sent a termination letter,  
17                   with the option of reclassification. Despite  
18                   diagnosis caused by the defendants and  
19                   various prescription medication, Petitioner  
20                   agreed to medical reclassification<sup>14</sup> to  
21  
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28           <sup>14</sup> The NY Post and Ms. Nolan, the cause of the injury and  
the need for reclassification, referred to this as a demotion,

1 Station Agent title at higher Train  
2 Operator's pay.  
3

4 60. Complainant filed instant case, 15-cv-1481,  
5 on Friday, March 20, 2015  
6

7 61. On Monday, March 23, 2015 Burke started  
8 fully paid<sup>15</sup> training at NYCT Learning  
9 Center, 2125 West 13<sup>th</sup> Street, Brooklyn,  
10 A.K.A. the former Public School 248.  
11

12 62. On Thursday, March 26, 2015 Ms. Kathianne  
13 Boniello emailed and voicemailled Plaintiff  
14 requesting information on an article the  
15 Post was writing on whistleblowing and the  
16 instant case.  
17

18  
19 63. Early Friday, March 26, 2015 Petitioner  
20 phoned Ms. Boniello and answered all  
21 questions. She attempted to construe prior  
22 litigation in a light least favorable to the  
23

24  
25 which was deliberately false and defamatory. This was not  
26 compulsory.

27 <sup>15</sup> The Authority is required to pay its represented Civil  
28 Servants at full pay and benefits for all required training, as  
per contract. The Authority has chosen to unlawfully and without  
cause withhold Burke's 2015 pay, sick pay, overtime pay and 60%  
pay. A grievance was filed and ignored.

AMENDED COMPLAINT AND AFFIRMATION

1 subject of the hit piece. Burke pointed out  
2 the successful aspects of that same  
3 litigation.<sup>16</sup>  
4

5 64. On Sunday, March 29, 2015, a deliberately  
6 false, malicious, libelous, slanderous,  
7 damaging article was published by the New  
8 York Post. This article was disseminated  
9 online at nypost.com, MTA Today website,  
10 Facebook and printed up and distributed at  
11 PS248 and throughout NYCTA system.  
12  
13  
14

15 65. The false defamation refers to complainant  
16 as a "Train Kook", etc.. This defamatory  
17 moniker was employed by unknown employees  
18 within the Brooklyn Learning Center and  
19 online for the remainder of that week and  
20 the article distributed in the lunch room,  
21  
22  
23

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24 <sup>16</sup> For example Burke v. Gutierrez, 04-cv-7593, resulted in  
25 Burke becoming a Relator (Federal False Claims Act) in finding a  
26 \$500,000+ fraud against the Department of Justice. This case,  
27 14-7077/78, ongoing in DC Circuit may be an additional cause of  
28 NYCTA retaliation, see **CESTRA v. MYLAN, INC. Civil Action No. 14-825** in the WD of Pennsylvania District Court. The 'Taylor Law' challenge resulted in the International Labor Organization ruling in favor of the Local.



1 superintendent's office and throughout the  
2 building, including postings.  
3

4 66. On Monday April 6, 2015 developed another  
5 panic attack.<sup>17</sup>A new Injury On Duty (IOD)  
6 form and a new WCB case developed, G1278038.  
7  
8 Burke was treated on April 6, 2015 by Dr.  
9 Hearn of Central Medical Services of  
10 Westrock, and again diagnosed with a panic  
11 attack and PTSD, but caused by the new  
12 injury inflicted over the preceding week by  
13 defendants.  
14  
15

16 67. The Post article is false and defamatory on  
17 virtually every part, other than the name  
18 and age of Plaintiff. The article was  
19 submitted as exhibit H in Declaration In  
20 Support of Motion To Dismiss by Defendant  
21 NYCTA.  
22  
23  
24  
25

26 <sup>17</sup> Petitioner never in the previous 52 years evidenced any  
27 negative mental manifestations, or was ever treated for any  
28 mental issue. No previous panic attack, PTSD or disorder  
diagnosis occurred.

1       68.       The article headline distributed throughout  
2               the NYCTA states 'Satanic MTA out to kill'.  
3  
4               This is not a quote and never said, i.e. a  
5               false attribution to characterize plaintiff  
6  
7               as mentally ill.

8       69.       "Train kook's claim" This is clearly  
9  
10              defamatory and false.

11      70.       "It's the D train, as in devil." Another  
12  
13              defamatory and false comment. The only  
14              persons named in the article<sup>18</sup>are Brian  
15              Burke and Reverend Sharpton, who does this  
16  
17              apply to?

18      71.       The phrase "satanic terroristic criminality"  
19  
20              was qualified in the original complaint with  
21              a footnote, this is not an accurate quote.  
22  
23  
24  
25

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26       <sup>18</sup> Petitioner has never been subject of any new article or  
27       story previously and considers himself a private person and only  
28       contacted Ms. Boniello in order to assist the Post in publishing  
      truth and not deliberate falsehood they chose.

1           72.        "Terrorize"<sup>19</sup> and "assault". Not sure where  
2                   the source of these "quotes" are from, as  
3                   the Post/NYCTA, in its successful attempt to  
4                   defame and damage, parse any random  
5                   unrelated document to construct their  
6                   "kookdom".  
7

8  
9           73.        Brian Burke was not demoted in 2013 to  
10                   station-agent trainee. Brian Burke was not  
11                   demoted, other than voluntarily from Train  
12                   Dispatcher, and has a perfect disciplinary  
13                   record. There is no title of Station Agent  
14                   Trainee, you are either a Station Agent or  
15                   not. Burke accepted a contractual medical  
16                   reclassification at the same pay as Train  
17                   Operator. This took place in 2014, not 2013.  
18  
19

20  
21  
22           74.        As is clear from caption, Petitioner is  
23                   suing, and works for New York City Transit  
24

25                   <sup>19</sup> The New York Post, a rabid Civil Servant, blue collar and  
26                   Union hater has previously referred to all TWU Local 100 members  
27                   who went on strike in 2005, including Petitioner, as terrorists.  
28                   Peter S. Kalikow, Chairman of the MTA at the time was a previous  
                  publisher of the NY Post and may have assisted in getting this  
                  article written and published.

1 Authority, Not the MTA or the Metropolitan  
2 Transportation Authority. Two legally distinct  
3 agencies. The MTA is not and has not been a  
4 party. Burke has never worked for the MTA.  
5

6 75. The Post/NYCTA claimed "that the MTA[sic]  
7 intended to "endanger every soul on the  
8 train and on the track<sup>20</sup>" in April 2014 when  
9 its inspectors<sup>21</sup> entered his train<sup>22</sup> to see  
10 weather he was wearing corrective lenses."  
11 Clearly entering the train would and should  
12 never be a problem, there were thousands of  
13 passengers on the train and this is the  
14  
15  
16  
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18 <sup>20</sup> As always throughout the hit piece no attribution for  
19 the "quotes".

20 <sup>21</sup> Train Service Supervisors are not "Inspectors" and have  
21 received no training as "inspectors" or act as same. There is  
22 the civil service titles of Car Inspector and Road Car  
23 Inspector, which are important non-supervisory positions in a  
24 different department, Car Equipment. They are responsible for  
25 repair of trains.

26 <sup>22</sup> Train Service Supervisors regularly ride trains and empty  
27 crew cabs, for compliance with rules purposes. This is an  
28 accepted and proper practice and does not interfere with safe  
train operation or constitute harassment. A TSS can judge the  
safe operation of a train in this manor without ever entering  
the operating cab, a presumed distraction at best. Mr. Akselrod  
and Ms. Nolan regularly terminate Civil Servants for allowing  
people in the cab, including friends, relatives etc. as the  
presumed safety violation of having another body in the small  
cabs is deemed intolerable and unjustifiable for any reason.

AMENDED COMPLAINT AND AFFIRMATION

1 reason for the subway. Petitioner has no  
2 idea, thought or say in how many TSSs, or  
3 "Inspectors" for that matter, road his  
4 trains on April 14 and 15 2015. This is  
5 routine and appropriate. The issue was and  
6 is the attacks, assaults and serial  
7 harassment by 5 TSSs IN THE OPERATING CAB.  
8  
9 The Three TSSs who testified at the WCB  
10 hearing acknowledged that the verified  
11 correct eyewear was being worn when the  
12 train entered in and stopped in the station  
13 and prior to entering cab. Thus this was not  
14 the purpose for their presence, which was to  
15 harass to the point of a panic attack and  
16 PTSD.<sup>23</sup>  
17  
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23 <sup>23</sup> Petitioner, in discussions with Union safety personnel,  
24 discussed and inquired why the TSSs did something so unsafe and  
25 criminal, when they could simply lie and state Petitioner was  
26 using a cell phone or wearing no glasses. This is because those  
27 accusations as a first offense for a 13 year employee with a  
28 clean record would not lead to a termination. Mr. Daley, the  
last TSS, and to a lesser extent the other 4, maliciously body  
checked Petitioner three times and clearly was attempting to  
cause a defensive push away, which would then be characterized  
as an assault by Mr. Daley and immediate termination and

1       76.       This case<sup>24</sup> is primarily a retaliation case.  
2               While Mr. Odums may have been motivated by  
3               other animus, even in his case retaliation  
4               for supporting Mr. Estes was the driver. I  
5               have no evidence Ms. Nolan is inspired by  
6               hatred of Irish or Catholics or men over 40.  
7               The possibility exists but Occam's Razor  
8               would lead us to retaliation as the sole  
9               motivator for all the most recent adverse  
10              job actions and harassments and hostile  
11              workplace.  
12

13       77.       Train Operators are allowed to wear  
14               "baseball caps". This is a brutal lie about  
15               PERB case # U-33283 where Complainant was  
16               barred from identifying himself in any way  
17               as a Shop Steward on NYCTA property or  
18               during lunch. Petitioner never kept "moldy  
19

20               designation as a criminal. There was some testimony at the WCB  
21               hearing of an additional supervisor or manager at 205 street  
22               station, who conspired to establish and then verify this.  
23

24               <sup>24</sup> And the United States Department of Commerce case, The  
25               Census Bureau was never sued.  
26  
27  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 30

1 food" in any refrigerator, which would and  
2 should be removed or banned, but honey,  
3 which never spoils, and lemon juice. False,  
4 malicious, defamatory and damaging.  
5

6 78. "Transit sources", i.e. Ms. Kristen Nolan,  
7 knows that PERB did not "rejected his claim  
8 that he was assaulted by a boss in 2007."  
9 Again false and defamatory. There was no  
10 rejection full stop. There was a negotiated  
11 stipulation that NYCTA cease and desist  
12 prior unlawful activity and recognize  
13 Plaintiff as a Shop Steward.  
14

15 79. "Burke" was never asked to remove required  
16 eyewear. Again false and defamatory, a false  
17 ADA violating pretext for the unsafe and  
18 unlawful harassment.  
19

20 80. Workers Comp case #G1100520 is before the  
21 full WCB panel due to Perjury, Subornation  
22 and Obstruction by the NYCTA. As an example  
23 all three testilying TSSs stated that they  
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28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 31

1           were standing three feet away<sup>25</sup>, which was  
2           impossible if they were also watching the  
3           track and signals, as they stated under  
4           oath. Admittedly, if they told the truth  
5           they would be fired.  
6

7  
8       81.     Burke would be making the same, 71K, as a  
9           Station Agent, due to the fact it was not a  
10          demotion. The NYCTA has not paid Burke for  
11          the two weeks at PS248 or 12 sick days, 3  
12          vacation weeks or 9 hours overtime worked  
13          this year. Wage theft and additional  
14          predicate RICO acts.  
15

16  
17  
18     82.     Burke was never "laid off" by the US. Census  
19           Bureau, the census ended. The Census Bureau  
20           was never sued. Petitioner was already  
21           engaged in NYCTA hiring process at the time  
22           and the NYCTA bans dual employment, a firing  
23           offense.  
24  
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28       <sup>25</sup> One TSS stated the correct three inch distance until  
      ordered by NYCTS to change to the suborned, coached perjury



1           83.       At PERB hearing of March 27, 2014, U-32637,  
2                   Burke asked Ms. Nolan if she represented Mr.  
3                   Odums, simple question. No simple answer.  
4                   This non answer lead Petitioner to believe  
5                   the clear perjury by Mr. Odums was suborned.  
6                   It s longstanding NYCTA practice for the  
7                   Department of Law to throw the lowest  
8                   ranking person possible under the bus. In  
9                   this case it would be Mr. Odums. Clearly,  
10                  Ms. Nolan pretended to be Mr. Odums attorney  
11                  so he would sign the false affidavits and  
12                  she could win her cases. Mr. Odums has no  
13                  rational legal reason to endorse the perjury  
14                  and certainly should have been apprised of  
15                  the conflict of interest he had with Ms.  
16                  Nolan, who has always only represented the  
17                  NYCTA and the Department of Law.

18           84.       The same goes with the suborned WCB  
19                   testilying. The three TSSs were not  
20                   represented by their own counsel and clearly  
21                   represented by their own counsel and clearly  
22                   represented by their own counsel and clearly  
23                   represented by their own counsel and clearly  
24                   represented by their own counsel and clearly  
25                   represented by their own counsel and clearly  
26                   represented by their own counsel and clearly  
27                   represented by their own counsel and clearly  
28                   represented by their own counsel and clearly

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 33

1 coached and pressured into their perjury.  
2 Clearly they were told if they told the  
3 truth they would be fired, which is true as  
4 any harassment is a termination violation.  
5 But since no witnesses or recording is  
6 allowed in operating cab we have the  
7 perfect, albeit wildly unsafe, location to  
8 terrorize at the orders of Ms. Nolan and Mr.  
9 Akselrod.  
10  
11  
12

13 85. Mr. Delize was the Line Superintendent who  
14 allegedly ordered the 5 TSSs to harass  
15 Burke. He has been forced to retire. There  
16 is no evidence that he could grab so many  
17 supervisors off of other lines for this  
18 campaign of terror. General Superintendent  
19 Roderick O'Toole and Director Akselrod could  
20 and did. Mr. Delize and even the 5 TSSs are  
21 the fall guys and patsies for their  
22 superiors.  
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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 34

1           On April 14 and 15, 2014 Ms. Kristen Nolan,  
2           esq., an attorney for NYCTA Department of Law, in  
3           concert with Mr. Leonard Akselrod, Director of  
4           Labor Relations for NYCTA over Department of  
5           Subways Rapid Transit Operations (RTO), and others,  
6           conspired to violate Petitioner's civil rights in  
7           an organized campaign to terrorize and  
8           constructively terminate primarily for reasons of  
9           retaliation. Complainant is a Whistleblower; in  
10          fact the top, if not only, at the Authority. Ms.  
11          Nolan works in the NYCTA Department of Law section  
12          dealing primarily with, as they see it,  
13          'recalcitrant' civil (or indentured) servants. The  
14          goal of that department is to win at any cost, i.e.  
15          "by any means necessary"<sup>26</sup>. Ms. Nolan dealt with  
16          this plaintiff over the years on numerous occasions  
17          at length and in person. These activities included,  
18          but were not limited to, several hours at a

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28          <sup>26</sup> **Malcolm Little** and also known as **El-Hajj Malik El-Shabazz**

1 '50h'<sup>27</sup>hearing and one or more Public Employment  
 2 Relations Board (PERB) hearings or settlement  
 3 conferences. Complainant is required to wear  
 4 'corrective lenses' when operating a train, or in  
 5 fact any vehicle. Please see attached 'IG Letter'  
 6 which was served on the Authority as a signed  
 7 Affidavit with attached and timely served Notice of  
 8 Claim, exhibit 2. Ms. Nolan, after several years  
 9 and numerous in person contacts, appeared to  
 10 'discover' (based on testimony at 2014 NYS  
 11 Department of Labor hearings) one or more  
 12 'disabilities'<sup>28</sup>. Incredibly, Ms. Nolan, and her co-  
 13 conspirator Mr. Akselrod, used their own definition  
 14 of disability under ADA, (see c, being regarded as  
 15 having such an impairment) as their unlawful  
 16

22 <sup>27</sup> N.Y. GMU. LAW § 50-h : NY Code - Section 50-H:  
 23 Examination of claims. Petitioner was not given requested  
 24 required transcript of that hearing and request said transcript  
 25 be included as evidence by reference in this complaint.

26 <sup>28</sup> Sec. 12102(ADA). Definitions (2) Disability: The term  
 27 "disability" means, with respect to an individual - (A) a  
 28 physical or mental impairment that substantially limits one or  
 more of the major life activities of such individual; (B) a  
 record of such an impairment; or (C) being regarded as having  
 such an impairment.

1 'pretext' (again WCB hearings 2014<sup>29</sup>) to terrorize a  
2 whistleblowing enemy while performing his safety  
3 sensitive train operation. To repeat, after 13+  
4 years of safe train operation (perfect disciplinary  
5 record<sup>30</sup>) these two individuals, acting for the  
6 Authority decided to unilaterally, dangerously and  
7 secretly withdraw what they saw as a 'reasonable  
8 accommodation' under ADA. To accomplish this they  
9 ordered at least 5 Train Service Supervisors (TSS)  
10 to terrorize, harass, 'interfere with safe train  
11 operation', assault and create the penultimate  
12 'hostile workplace environment' within the small  
13 confines of an operating cab while train was in  
14  
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23 <sup>29</sup> The Authority, as is their practice, on the record stated  
24 they would purchase the WCB hearing transcript and supply same  
25 to Petitioner's Counsel for approval. This was not done and  
26 Complainant wishes to include said transcripts by reference and  
27 will require same for any 12(b)6 motion.

28 <sup>30</sup> Plaintiff not only has a perfect disciplinary file, but  
was accepted by the Authority as a Trainer, worked 4 years as a  
contractual Safety Representative and was a supervisory Train  
Dispatcher who opted for voluntary demotion for reasons of pay,  
seniority, 2 year probation, etc..

1 motion with up to 2,000 passengers. This satanic<sup>31</sup>  
2 terroristic criminality was intended to, and did in  
3 fact, endanger every soul on the train and on the  
4 track. Please see attached (exhibit 3) document  
5 from the federal Department of Labor (Occupational  
6 Health and Safety Administration (OSHA)) accepting  
7 this petitioners *prima facie* case for retaliation  
8 by not paying owed 60% sick pay. The OSHA case has  
9 been withdrawn as the 60% from 2014 has been paid.  
10  
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13

14 Petitioners Union (Transport Workers Union,  
15 Local 100) has been fully apprised of this unlawful  
16 conduct and is fully supportive of their member.  
17 They are especially concerned as this new unwritten  
18 policy by the Department of Law and Labor Relations  
19 instructing supervisors that they have a free hand  
20 to attack and harass whistleblowing, or in fact any  
21 unpopular Train Operator, Conductor or Bus  
22 Operator. This is an extreme danger to the lives  
23  
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27 <sup>31</sup> The NYCTA Department of Law's motto, "Do what thou wilt  
28 shall be the whole of the Law...." developed in the early 1900s  
by Aleister Crowley.

1 and careers of operating Civil Servants, not to  
2 mention the public. We know why the Authority  
3 retaliated against this whistleblower but why  
4 endanger the public? Primarily two reasons (1)  
5 There can be no witnesses. Conductors and Train  
6 Operators can, and have been terminated for  
7 allowing unauthorized personnel in the cab, as  
8 anyone in the cab is a potential distraction and  
9 presumptively unsafe. (2) No recordings. Operating  
10 personnel are affirmatively barred from using any  
11 "electronic device" while operating. Thus to record  
12 any attack while operating would itself be a  
13 termination offense. So we now have the infamous he  
14 said/she said dissonance. If the harassing  
15 supervisors, acting on management  
16 direction/protection, told the truth they would be  
17 fired on the spot. So they 'testily'. Let us go to  
18 management's version of what happened (see again,  
19 by reference, WCB transcripts possessed by  
20 defendant). Ms. Nolan on Friday April 11, 2014 at a

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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 39

1 PERB settlement conference was told that 3  
2 Affidavits she submitted may have been suborned.  
3  
4 Apparently she agreed as on the following workday  
5 she called in her favors with management and set  
6 about successfully separating Complainant from his  
7 livelihood and into treatment for medical maladies  
8 caused by said campaign of terror. Please see again  
9 'IG Letter'. The Subornation of the 3 Affidavits is  
10 being investigated by the Kings County DA, in  
11 cooperation with TWU Local 100. The 3 TSS's that  
12 terrorized the Plaintiff on Tuesday, April, 15,  
13 2014 testified at several WBC hearings in 2014.  
14 They lied not only about not harassing or  
15 assaulting the injured party but on provable  
16 deliberate misstatements. For example, all three  
17 stated that they were standing 3 feet away while  
18 contradictorily stating they were viewing the track  
19 and approaching signals. At 3 feet away the view is  
20 blocked by the bulkhead, as the suborning attorney  
21 did not know. One TSS stated he was 3 inches away  
22  
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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 40



1 (correct) and then cued by NYCTA counsel changed  
2 that to the "3 feet" perjury. In an attempt to  
3 mitigate the crime, one TSS stated, under oath,  
4 that Petitioner, or in fact any Train Operator, was  
5 allowed to expel or bar them from the operating  
6 cab. This was brutally contradicted by the TSS that  
7 endangered the complainant (and the public) the  
8 most by the ferocity of his attack, TSS Daley. So  
9 why would the 5 TSS's perform management's bidding  
10 and instruction to harass and terrorize a Motorman  
11 while he is operating a train? Consideration. The  
12 next promotion from TSS is Deputy Superintendent, a  
13 managing title not subject to Civil Service law or  
14 procedure. No team player, no promotion. Of course,  
15 TSS's can themselves be harassed by management,  
16 even if they do not seek promotion, via job  
17 assignments etc., or even be demoted if still on  
18 their unlawful 2 year promotion (see IG Letter).

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26 **NORMAL PROCEDURE**

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28  
AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 41

1 A neutral fact finding body may ask, "What is the  
2 procedure if a complaint, deliberately incorrect or  
3 not, is received by management?" Occasionally, safety  
4 complaints are made by passengers or employees.  
5 Depending on the nature of the complaint, it is either  
6 ignored or investigated by one's assigned TSS. Every  
7 TSS has aprox 30 hourlies assigned to them and any  
8 investigation regarding those thirty is put to them.  
9 But not in this case. Why? Because Mr. Greaves,  
10 Petitioner's assigned TSS, would not perform the  
11 necessary terroristic hostile acts. Simple. TSS Greaves  
12 was available and on the clock on both April 14 and 15<sup>th</sup>  
13 2014, the dates of the concerted adverse job actions,  
14 and was not contacted by management to investigate. TSS  
15 Greaves was called by the Department of Law to testify  
16 at a WCB hearing and when the Authority Counsel saw his  
17 testimony would be inculpatory to their case he was  
18 sent home and an adjournment was requested. When are  
19 complaints not even investigated? When they involve  
20 allegations of unsafe train operation by someone who

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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 42

1 never saw the person operate, such as the malicious  
2 complaint by Ms. Nolan. There is a procedure to catch  
3 safety violations by operating personnel, complaint or  
4 no complaint, malicious or not. They are called  
5 "Efficiency Tests" and are regularly performed to catch  
6 unsafe operation. Petitioner has a 24 page directive  
7 which will be entered as an exhibit if Defendant does  
8 not acknowledge their violation of this procedure.  
9 Initially, all 5 TSSs comported with the standard  
10 operating procedure (SOP) in observing Petitioner in  
11 entering and stopping at boarding stations. They  
12 acknowledged observing Complainant, as always, in  
13 compliance with all safety bulletins and rules. The SOP  
14 is to then wait for the next train and do an identical  
15 observation. Instead, in violation of over a 100 years  
16 of precedent regarding safe train operation, all five,  
17 over the course of two days, in an escalating manor,  
18 instituted their 'hostile workplace' on this bizarre  
19 flimsy 'pretext' immediately after it was proven false.  
20 There was no legitimate reason for any of the 5 to  
21  
22  
23  
24  
25  
26  
27  
28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 43

1 enter the operating cab and interfere with safe train  
 2 operation, endangering the Public, contractors and  
 3 employees. Mr. Akselrod was asked, under oath, if he  
 4 ever ordered similar treatment on another employee. He  
 5 answered in the negative. Management would love to  
 6 expand on this newfound 'management prerogative' to rid  
 7 themselves of all actual, or potential, whistleblowers  
 8 and if it endangers millions of passengers and tens of  
 9 thousands of employees, so what? "By any means  
 10 necessary", "Do as thou wilt" and finally, "Power  
 11 corrupts...<sup>32</sup>". Petitioner pleads to this neutral fact  
 12 finding body to end this criminality.

### 13 PREDICATE ACTS

14 As to the predicate acts for federal and state  
 15 RICO, please review attached exhibit 3  
 16 "MTAMONEYTHROWNAWAY". This information was disclosed to  
 17 the Authority at previous 50-h hearing. Also see  
 18 allegations of Obstruction of Justice regarding the  
 19 river of Subornation. "MTAMONEYTHROWNAWAY" involves

20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28 <sup>32</sup> "Power tends to corrupt and absolute power corrupts  
 absolutely." John Dalberg-Acton, 1st Baron Acton

1 primarily Fraud. As to *Mens Rea*, see the federal RICO  
2 case United States vs. Key West Police Department 837  
3 F.2d 1509.  
4

5 **EEOC "RIGHT TO SUE" LETTER**

6  
7 Please see attached exhibit 1. This case was filed  
8 within 90 days of receipt of letter, received on  
9 12/26/14. Also attached is the 'Intake Questionnaire'  
10 for EEOC case # 520-2015-00756, with Petitioner  
11 claiming discrimination as a protected class under  
12 race, sex, age, disability, national origin, religion,  
13 and retaliation. Complainant has filed previous EEOC  
14 action and assisted TO Estes in his Transit EEO case.  
15  
16  
17

18 **NOTICE OF CLAIM**

19 A timely Notice of Claim was served on the NYCTA on  
20 July 11, 2014, attached as exhibit 2. No 50-H (N.Y.  
21 GMU. LAW § 50-h)<sup>33</sup> Demand was served personally or by  
22  
23

24 <sup>33</sup> The demand shall be in writing and shall be served  
25 personally or by registered or certified mail upon the claimant  
26 unless the claimant is represented by an attorney, when it shall  
27 be served personally or by mail upon his attorney. The demand  
28 shall give reasonable notice of the examination. It shall state  
the person before whom the examination is to be held, the time,  
place and subject matter thereof and, if a physical examination  
is to be required, it shall so state. If the place of


AMENDED COMPLAINT AND AFFIRMATION

1 registered or certified mail within 90 days, or at all.  
2 An email, attached, was sent the workday prior last  
3 December to a demand for a 'Statutory Hearing', but was  
4 not considered reasonable notice, timely, proper format  
5 or properly served. Nevertheless, Discovery Deposition  
6 and Interrogatory remain available.  
7  
8

9  
10 **CONCLUSION**

11 WHEREFORE, plaintiff prays that the Court grant  
12 such relief as may be appropriate, including injunctive  
13 orders, punitive damages, pre-judgment interest,  
14 medical costs, other costs, back wages, pain and  
15 suffering, and attorney's fees.  
16

17 Dated this 26<sup>TH</sup> day of JUNE, 2015  
18

19  
20   
21 Brian Burke, pro per

22 examination is located outside the municipality against which  
23 the claim is made, the claimant may demand, within ten days of  
24 such service, that the examination be held at a location within  
25 such municipality. Such location shall be determined by the  
26 municipality. If a physical examination is to be required and  
27 there is no appropriate place for such an examination within the  
28 municipality, such examination shall be given at a location as  
close to such municipality as practicable. No demand for  
examination shall be effective against the claimant for any  
purpose unless it shall be served as provided in this  
subdivision within ninety days from the date of filing of the  
notice of claim.

AMENDED COMPLAINT AND AFFIRMATION

EEOC Form 161 (11/09)

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Brian Burke**  
**145 East 23rd Street**  
**Apt. 4r**  
**New York, NY 10010**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**



On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.

EEOC Representative

Telephone No.

**520-2015-00756**

**Austin F. Turner,**  
**Investigator**

**(212) 336-3750**

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

*Kevin J. Berry*

**Kevin J. Berry,**  
**District Director**

DEC 19 2014

(Date Mailed)

Enclosures(s)

cc:

**Attn: Eamonn Foley, Exec. General Counsel**  
**NEW YORK CITY TRANSIT AUTHORITY**  
**130 Livingston Street, 12th Floor**  
**Brooklyn, NY 11201**



Enclosure with EEOC  
Form 161 (11/09)

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),  
the Genetic Information Nondiscrimination Act (GINA), or the Age  
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

**PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):**

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

**ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:**

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

**ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:**

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

**IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.**





Austin F. Turner  
Investigator  
Phone (212) 336-3750  
Fax (212) 336-3624

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
For General Information: (800) 669-4000  
TTY: (800)-669-6820  
District Office: (212) 336-3620  
General FAX: (212) 336-3625

VIA U.S. MAIL

Brian Burke  
145 East 23<sup>rd</sup> Street  
Apt. 4R  
New York, NY 10010

Re: Burke v. New York City Transit Authority  
EEOC No.: 520-2015-00756

Dear Mr. Burke:

The Equal Employment Opportunity Commission (hereinafter referred to as the "Commission") has reviewed the above-referenced charge according to our charge prioritization procedures. These procedures, which are based on a reallocation of the Commission's staff resources, apply to all open charges in our inventory and call for us to focus our limited resources on those cases that are most likely to result in findings of violations of the laws we enforce.

In accordance with these procedures, we have examined your charge based upon the information and evidence you submitted. You allege you were discriminated against because of your race, sex, national origin, age, disability, religion and participation in a protected activity.

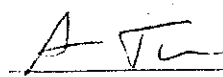
Per our conversation of December 10, 2014, the Commission has reviewed the information you submitted and has determined that there is not enough information to conclude that further investigation would likely result in finding a violation of federal law.

This does not certify that Respondent is in compliance with the statutes. No finding is made as to any other issue that might be construed as having been raised by this charge.

The Commission's processing of this charge has been concluded. Included with this letter is your Notice of Dismissal and Right to Sue. Following this dismissal, you may only pursue this matter by filing suit against the Respondent named in the charge within 90 days of receipt of said notice. Otherwise, your right to sue will be lost.

Please contact Austin Turner at (212) 336-3750 if you have any questions.

Sincerely,

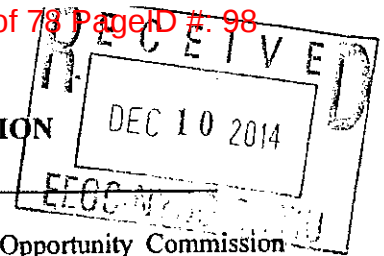
 for  
Kevin Berry  
District Director

DEC 19 2014

\_\_\_\_\_  
Date



## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE



Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." Please Print.

### 1. Personal Information

Last Name: Burke First Name: Brian MI: T  
 Street or Mailing Address: 145 East 23rd Street Apt Or Unit #: 4R  
 City: New York County: New York State: NY ZIP: 10010  
 Phone Numbers: Home: ( 646 ) 434-8513 Work: ( 347 ) 643-7700  
 Cell: ( 212 ) 614-8515 Email Address: briantburke@gmail.com  
 Date of Birth: 09/13/1961 Sex: Male ☒ Female ☐ Do You Have a Disability? ☒ Yes ☐ No

Please answer each of the next three questions.

- i. Are you Hispanic or Latino? ☐ Yes ☒ No
- ii. What is your Race? Please choose all that apply. ☐ American Indian or Alaska Native ☐ Asian ☒ White  
☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? Irish

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: Thomas Burke Relationship: Father  
 Address: 850 Broderick Street, apt 317 City: San Francisco State: CA Zip Code: 94115  
 Home Phone: ( 510 ) 258-4627 Other Phone: (      )     

### 2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

☒ Employer ☐ Union ☐ Employment Agency ☐ Other (Please Specify)     

**Organization Contact Information** (If the organization is an employer, provide the address where you actually worked. If you work from home, check here ☐ and provide the address of the office to which you reported.) If more than one employer is involved, attach additional sheets.

Organization Name: New York City Transit Authority  
 Address: Stillwell Avenue Terminal County: Kings  
 City: New York State: NY Zip: 11224 Phone: ( 347 ) 643-7700  
 Type of Business: Subway Job Location if different from Org. Address:       
 Human Resources Director or Owner Name: Thomas F. Prendergast Phone: 212-878-7000  
 Number of Employees in the Organization at All Locations: Please Check (✓) One  
☐ Fewer Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☒ More than 500

### 3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? ☐ Yes ☒ No

Date Hired: 02/26/2001 Job Title At Hire: Train Operator  
 Pay Rate When Hired: Minimum wage Last or Current Pay Rate: \$33  
 Job Title at Time of Alleged Discrimination: Train Operator Date Quit/Discharged: n/a  
 Name and Title of Immediate Supervisor: Train Service Supervisor Greaves

If Job Applicant, Date You Applied for Job \_\_\_\_\_ Job Title Applied For \_\_\_\_\_

**4. What is the reason (basis) for your claim of employment discrimination?**

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

☒ Race ☒ Sex ☒ Age ☒ Disability ☒ National Origin ☒ Religion ☒ Retaliation ☐ Pregnancy ☐ Color (typically a difference in skin shade within the same race) ☐ Genetic Information; choose which type(s) of genetic information is involved:  
☐ i. genetic testing ☐ ii. family medical history ☐ iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: Roman Catholic, Irish

If you checked genetic information, how did the employer obtain the genetic information? \_\_\_\_\_

Other reason (basis) for discrimination (Explain). Retaliation for protected activity, including assisting former TO Estes in EEO com.

**5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.**  
 (Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A) Date: 12/01/2014 Action: Refusal to pay 60% sick, as per contract, as retaliation for filing grievances, safety reports, as a Safety Rep, assisting members as a Shop Steward, filing PERB cases, etc.

Name and Title of Person(s) Responsible: Leonard Akselrod, Director of Labor Relations, Kristen Nolan, esq. Attorney NYCTA DOL

B) Date: 04/14/2014, 04/15/2014 Action: Brutally and criminally harassed while operating train by half a dozen supervisors in an escalating manor. This resulted in a PTSD diagnosis, which is being treated

Name and Title of Person(s) Responsible: Leonard Akselrod, Director of Labor Relations, Kristen Nolan, esq. Attorney NYCTA DOL

**6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.**

I reported Subornation of Perjury by the NYCTA Department of Law, please see attached 'IG Letter'. This is being investigated by Kings County District Attorney's Office

**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?**

The alleged 'discovery' of what the NYCTA claims, after 13 years of reasonable accommodation, to perceive as a disability, see 'IG Letter'. By Kristen Nolan, esq., the Suborner, Leonard Akselrod and the Train Service Supervisors who brutally harassed this Civil Servant out of his job. They have stated that they will continue this conduct, where I to return to train operation, endangering the public, myself and fellow employees, as precedent against whistleblowers.

**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

Of the persons in the same or similar situation as you, who was treated *better* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
All other Train Operators	All	Train Operator
Description of Treatment Unprecedented interference (within the last 100 years) of safety sensitive Civil Servant, creating danger. No legitimate cause was found for this harassment pretext.		
B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
Evan Miller	Black Female rest unknown	Conductor
Description of Treatment Paid 60% sick while out on controverted workers comp claim		

Of the persons in the same or similar situation as you, who was treated *worse* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
None		

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Of the persons in the same or similar situation as you, who was treated the *same* as you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
Roger Toussant	Black Male Trinidad, unknown	Track Worker

Description of Treatment Terminated without legitimate cause, investigated by PI's paid out of public funds, etc.

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply:

- ☐ Yes, I have a disability
- ☐ I do not have a disability now but I did have one
- ☒ No disability but the organization treats me as if I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).

See attached 'IG Letter'. The perceived "disability" or "disabilities" does not and has not limited anything. I have been required to wear corrective lenses for 13+ years, as I have done.

11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?

Yes ☒ No ☐

If "Yes," what medication, medical equipment or other assistance do you use?

Prescription glasses.

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

Yes ☐ No ☒

If "YES", when did you ask? \_\_\_\_\_ How did you ask (verbally or in writing)? \_\_\_\_\_

Who did you ask? (Provide full name and job title of person)

I have been required by the NYCTA to wear corrective lenses for 13+ years

Describe the changes or assistance that you asked for:

To be allowed to do my job without public endangering harassment, see 'IG Letter'

How did your employer respond to your request?

By brutal unsafe harassment, constructive termination, denial of 60% sick pay, etc..

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

A. Full Name	Job Title	Address & Phone Number
TSS Daley	Train Service Supervisor	Bedford Park Station, Bronx New York 347-643-7700

What do you believe this person will tell us?

That he did not harass me or interfere with my train operation.

B. Full Name	Job Title	Address & Phone Number
Leonard Akselrod	Director of Labor Relations	2 Broadway, New York, NY 511

What do you believe this person will tell us?

That he did not retaliate or discriminate against me. He will have to acknowledge the conspiracy, but will claim attorney client privilege, despite the fact Ms. Nolan is not his attorney.

14. Have you filed a charge previously in this matter with EEOC or another agency? Yes ☐ No ☒

15. If you have filed a complaint with another agency, provide name of agency and date of filing:

16. Have you sought help about this situation from a union, an attorney, or any other source? Yes ☒ No ☐


Provide name of organization, name of person you spoke with and date of contact. Results, if any?

Levine & Blit, PLLC, Linsey Blackwell, esq. November 21, 2014. Considering representation. IG Letter sent to MTA Inspector General and others by email on April 16, 2014 and later by certification. Contacted by Kings County DA.

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

Box 1 ☐ I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

Box 2 ☒ I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

  
Signature

12/01/2014  
Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

1. FORM NUMBER/TITLE/DATE. EEOC Intake Questionnaire (9/20/08).
2. AUTHORITY. 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a), 42 USC §2000ff-6.
3. PRINCIPAL PURPOSE. The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
4. ROUTINE USES. EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.





In the Matter of the Claim of

BRIAN BURKE

against

NEW YORK CITY TRANSIT AUTHORITY

TO:

TRANSIT AUTHORITY

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

BRIAN BURKE prose  
145 EAST 23RD ST APT 4R  
NEW YORK, NY 10010

2. The nature of the claim:

ESCALATING  
CIVIL & CRIMINAL HARASSMENT N.Y. Fin. Law 88187194  
UNLAWFUL & CONSTRUCTIVE TERMINATION FRAUD 18 U.S.C. 1964  
VIOLATIONS OF 115 STAT 272, PCA 460 SEC 460.20, 84 STAT 9223  
42 U.S.C. 1983, AND ALL OTHER FEDERAL, NYS AND NYCLAWS THAT APPLY.  
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

3. The time when, the place where and the manner in which the claim arose:

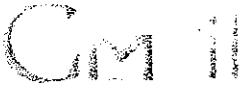
FROM THE TIME OF, APPROXIMATELY,  
14:47 (2:47 PM EST) STILLWELL TERMINAL, CONEY ISLAND, BRKN, NY TO 21:40 (9:40 PM EST)  
BEEFORD PARK TERMINAL, TIME AND LOCATIONS IN BETWEEN INCLUSIVE, ON MONDAY, APRIL 14, 2014  
ALSO, APPROXIMATELY, 14:47 (2:47 PM EST) STILLWELL TERMINAL, CONEY ISLAND, BKLN  
NEW YORK TO, APPROXIMATELY, 21:40 (9:40 PM EST) BEEFORD PARK TERMINAL, BRONX, NY  
INCLUSIVE OF TIMES AND LOCATIONS IN BETWEEN, APRIL 15, 2014

4. The items of damage or injuries claimed are:\*

TERRORIST, CONSPIRATORIAL ACTS COMMITTED  
UPON A WHISTLE BLOWING CIVIL SERVANT. \$10,000,000. PUNITIVE DAMAGES \$100,000,000  
BRIAN BURKE WAS DIAGNOSED WITH POST TRAUMATIC STRESS DISORDER BY DR. JEAN  
XIAO, MD ON APRIL 21, 2014 DUE TO CON CERTED ACTIVITY BY R.I.C.O. ACTORS WORKING  
FOR DEPARTMENT OF LAW, NYCTA (GENERAL COUNSEL'S OFFICE) AND SUBORDINATES. PLEASE  
SEE ATTACHED "IG LETTER".  
ACTUAL

TOTAL AMOUNT CLAIMED\*

(\$110,000,000.00)



fin macumhail <briantburke@gmail.com>

## 50h Hearing Monday

2 messages

Nolan, Kristen <Kristen.Nolan@nycf.com>  
To: B <briantburke@gmail.com>

Fri, Dec 19, 2014 at 10:51 AM

Mr. Burke:

Please let me know by today at 4 pm whether you plan to attend the 50h hearing on Monday with respect to the Notice of Claim you filed. I need to know whether I should order a court reporter and reserve a conference room. I will try to contact you by phone as well.

Thank you,

Kristen Nolan

Kristen M. Nolan  
Attorney  
New York City Transit Authority  
130 Livingston St - 12th Fl  
Brooklyn, NY 11201  
(718) 694-5720  
(718) 694-5727 (fax)

Nolan, Kristen <Kristen.Nolan@nycf.com>  
To: B <briantburke@gmail.com>

Fri, Dec 19, 2014 at 10:55 AM

Mr. Burke:

I just tried reaching you at the number you listed (212) 614-8515. It appears to be disconnected. If I do not hear from you by the end of the day today, I will assume you are not appearing on Monday.

Thank you,

Kristen Nolan

**From:** Nolan, Kristen  
**Sent:** Friday, December 19, 2014 10:51 AM  
**To:** 'B'  
**Subject:** 50h Hearing Monday

[Quoted text hidden]

Brian Burke

111 York Street, 5th Floor, New York, NY 10038-5000  
E-Mail: brian.burke@mta.com A 516 270 0000

Date: Wed, Apr. 16, 2014

Barry L. Kruger  
Inspector General  
Metropolitan Transportation Authority  
2 Penn Plaza  
5<sup>th</sup> Floor  
New York, NY 10121

Dear Inspector General Kruger:

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct. Executed on 04/16/2014. Brian Burke /S/. I am not a lawyer. I am a Train Operator and Shop Steward. I have been compelled to write you for my safety and others. I became acquainted with your good offices many years ago when I reported to you ongoing violations of NYS Education Law Title VIII Article 130 Subarticle 4 **§6512 Unauthorized practice a crime**. I called the (s)crew office to report I had "gastrointestinal distress". The NYCTA employee stated "you said stress", which by syllable was correct. He then proceeded to diagnose me, refer me to a physician and commit the adverse job action of taking me out of service. I reported this felony to your office and this activity ceased.

The problems occurring now are much more egregious. Timeline: hired as a Train Operator Feb. 26, 2001. On 9/11, my RDO, I called the (s)crew office and requested if they needed additional TO's. They did not. Extra/extra, on 9/13-forward I was assigned to Chambers E, directly under the pile. I have applied to the Zadroga Fund. When I was put back on the road, a TSS Petrie boarded my southbound W train at 36<sup>th</sup> Street. He was immediately hostile and I operated accordingly, i.e. slow. He took me out of service for "creeping", which I acknowledged doing. He wanted to take my conductor out for allegedly closing both zones simultaneously. There was no conductor on board but there was a TO at Stillwell. He informed RCC, Stillwell Administration, W line management and the (s)crew office that he was taking me, a rookie, out of service for creeping. I appeared at 370 Jay 8am next day. At Noon, I was approached by my friend Eddie Dos Santos. Apparently in TSS Petrie's written report (G2) he wrote that I was taken out of service for "almost going out of a station" and demanded my termination. This caused a big laugh because the 10car marker at those stations is at the end of the station. Either you are in, or you are out. No "almost". This was a deliberate lie and would count as Perjury and/or Subornation, except that these 'G2's' are not sworn. Nevertheless, dozens of employees have been terminated over the years for 'lying' on G2's or in oral reports to Management. TSS Petrie would take a greater amount of Civil Servants out of service than all the hundreds of others combined and always lied, perhaps pathologically, on all his G2's. Years later, he attempted to strong arm rob a work-train motorman /Marine. Caught unaware, the Marine regressed to his training and defended himself. TSS's then did not have uniforms. TSS Petrie was hospitalized and incident tested. Oxycodone in his system. A TSS is the highest paid annual title. It is the most 'safety sensitive'. A TSS is effectively a 'super-motorman' and operates all subway equipment in all conditions including after 12/9's, derailments, collisions, pull-a-parts, other-than -head-end, etc.. I realized he has been on that for over a decade. This was covered up. He still works as a TSS.



Four years ago I picked X/S and became acquainted with 205<sup>th</sup> street. There was no drinking water available for the Members. As a Shop Steward, I approached the Line Superintendent R. O'Toole, at the next opportunity. At Bedford Park Crew Reporting Center, I informed him there was no Potable Water at 205<sup>th</sup> St.. He informed me that he, and by extension the Authority was not required to provide "potable water" but instead "running water". The only difference between "running water" and "potable water" is that you can drink one and not the other. He claimed the "bulletins" said so. I pointed out that twice a year the NYCTA President distributes a signed letter ordering us to be hydrated at all times. He told me to tell the President to "read the bulletins". In order not to be grossly insubordinate, I am doing so now. Present were TSS Daley(sp?) and others. I immediately informed my good friend and International Delegate roomie, Kevin Harrington, V.P. RTO TWU Local 100 in person. I ranted for hours about this and said, and still believe, that this opinion/action is incompatible with being management or management by designation. The "bulletins" do not require the TA to have oxygen in the air on the premises, according to the same logic. This is "waste fraud and abuse" of the highest order. Brother Kevin reached out to Supt. Batalado, who had water bottle and water filter dispenser delivered to 205<sup>th</sup> st.. The bottle dispenser disappeared to O'Toole's office. When Supt. O'Toole was, of course, promoted, despite payroll padding and gambling charges, Supt. Capone took his office. Supt. Capone approached me and requested was there anything the TA could provide in the way of crew room amenities etc.. He explained that there is an ongoing maintenance budget line to maintain and/or upgrade/replace old or broken appliances *etc.*. On information and belief, these monies were and are stolen by other managers, including O'Toole, and converted to 'bonuses'. Supt. Capone, with 20+ years as a manager told me he was being forced out for assisting the Civil Servant employees under his care. He was/is diabetic and O'Toole removed his water as retaliation. The reign of harassment began for me.

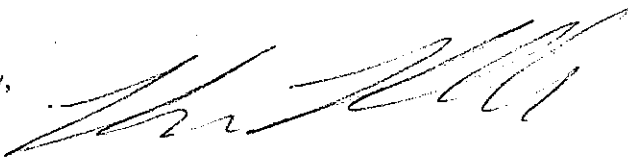
I accepted a promotion to Train Dispatcher August 31, 2012, due to ongoing harassment/Adverse Job Assignments by the (s)crew office. I believe this was orchestrated out of O'Toole's office. My promotion letter stated "one year probation". So does Civil Service Law. Ms. Pinkney, of Labor Relations told me at the Step II, regarding the Education Act violations I brought to your attention, that the TA "does not have to follow law". I.E. "Do what thou wilt shall be the whole of the law" Aleister Crowley. I got various 'legal opinions' from management and the SSSA. I resumed my current title and returned Dec. 17, 2012. A Supervisor, I defer naming him, his 'nom du club', 'Rue Paul', thus, RP, harassed me from the moment I signed in until I picked off the line. I filed a PERB and NYS Human Rights case against the TA for allowing RP to do so. I believe this is an element of the ongoing retaliation for attempting to get water for the members and assisting a Member on an EEO case. To list all the harassment would appear *ad nauseum*. I had a settlement conference Friday regarding another PERB case regarding my right to wear union gear and identify myself as a Shop Steward. This was a FAIL and I told opposing counsel (TA) that the provable Perjury Mr. RP committed in three sworn affidavits was, on information and belief, Suborned by one or more employees of NYCTA Law Department. The Harassment accelerated Monday and quadruped Tuesday. I believe I may be in mortal danger. Rev Sharpton was accused of 'ratting out the mob' and I maybe justly accused of 'ratting out the MTA'. I believe the MTA may be more dangerous. There is 600 volts, high structure, 600 ton trains and an infinite way to be murdered or 'suicided'.

[www.urbandictionary.com/define.php?term=suicided](http://www.urbandictionary.com/define.php?term=suicided). I was informed years ago that when a motorman inspecting his train in the yard stepped in an electrified puddle and was electrocuted, the TA contended he "committed suicide" in order to deny his family the 50k death benefit. As a Catholic I would not be allowed in a consecrated grave. Various supervisors this week attacked me for having one or more alleged 'disabilities' that they would terminate me for. As a young man applying to be a Navy Pilot I discovered I was mildly astigmatic (myopia) and I am also mildly photophobic. I am left handed and potentially fatally allergic to penicillin. I have severe Allergic Rhinitis, but do not take anti-histamines

as that would endanger the Public. I do not carry an EpiPen but a homemade Medical Alert Band. I have a below average BMI. I have pre-mature grey hair. I am left-handed. On Information and Belief, none of these alleged disabilities put the Public at danger. Admittedly my Allergic Rhinitis sometimes causes involuntary eye watering, sneezing etc. and can be very distracting. If the TA plans to fire me for possessing this inherited condition I will immediately file an ADA and RICO case against the Authority and suits against the malefactors individually. Their next act will, I believe, be an attempt to derail my train packed with thousands of passengers. I was brutally harassed yesterday 5 minutes before I cleared by TSS Daley, for the first time.

I consider these actions to be a form of Constructive Termination and a Cause of Action. I will be requesting the immediate Termination, Fine, Arrest, Indictment, Trial and Incarceration of any Racketeer Influenced Corrupt Individuals acting in concert. I will be, in addition, informing outside law enforcement. I will be filling another Notice Of Claim, a Safety Dispute Resolution Form and an IOD form for the deliberate stress/harassment/Retaliation caused/committed against this admitted whistleblower.. I will be filling another PERB case. I will be filing a NYC Human Rights Case. Then there is Federal and State Court and Injunctive Relief. While I prefer *pro se*, I will be obtaining contingency Counsel. I will request my good friend, John Samuelson, or my other good friend, Curtis Tate, to be present when I sign in tomorrow. If they are unavailable I will request Local 100's General Counsel. I will video and request the SDRF be signed by a friend I only met once, CTO Herbert E. Lambert. When I was a "TD-in-training" at RCC, CTO Lambert appeared genuinely concerned about his subordinates, our training and even the lack of drinking water at 180 street facility. I have no reason to believe he, CEO T. Prendergast, President C. Bianco. ACTO Greenblatt, former General Counsel Martin Schnabel, current GC Lewis S. Finkelman are aware of these ongoing felonies or frauds/harassments/Retaliation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Burke', with a stylized flourish at the end.

[Brian Burke /S/]

[Train Operator, Shop Steward, Safety Rep. TWU Local 100]

**U.S. Department of Labor**

Occupational Safety and Health Administration  
201 Varick Street, Room 670  
New York, New York 10014  
(212) 337-2378  
(212) 337-2371 - fax



February 5, 2015

Brian Burke  
145 East 23<sup>rd</sup> Street Apt. 4r  
New York, NY 10010

Certified Mail #7014 0150 0001 1026 0697

Re: NYCTA/Bruke/2-4173-15-095

Dear Mr. Bruke:

This letter acknowledges receipt of your whistleblower complaint filed under National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142, on **January 15, 2015** against **NYCTA** (Respondent).

The Occupational Safety and Health Administration (OSHA) is responsible for enforcing the whistleblower provisions of NTSSA, and will conduct its investigation following the procedures outlined in 29 CFR Part 1982. You may obtain a copy of the pertinent statute and regulations at <http://www.whistleblowers.gov>. Upon request, a printed copy of these materials will be mailed to you.

Under these procedures, OSHA will disclose to the parties information relevant to the resolution of the case as well as provide all parties an opportunity to fully respond. As such, both you and **NYCTA** will receive a copy of each other's submissions to OSHA that are responsive to the above referenced whistleblower complaint. We have notified Respondent of the filing of this complaint and provided Respondent with a copy. **We request that any future documents that you submit to OSHA, you also send a copy to the Respondent at the address below:**

**NYCTA**  
**130 Livingston Street, 6<sup>th</sup> Floor**  
**Brooklyn, NY, 11201**

If the information provided contains private, personally identifiable information about individuals other than you, such information, where appropriate, should be redacted before disclosure. OSHA may contact the party directly for the unredacted copy, if necessary.

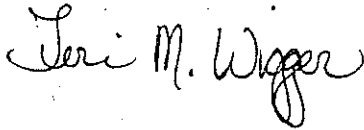
MTA  
NEW YORK CITY TRANSIT  
OPERATIONS SUPPORT  
-2 MAR 2015 16 16  
SERVICE DELIVERY

Attention is called to your right and the right of any party to be represented by counsel or other representative in this matter. In the event you choose to have a representative appear on your behalf, please have your representative complete the Designation of Representative form enclosed and forward it promptly.

At this time, an investigator has been assigned to your case and will be contacting you in the near future. In the interim, please save any evidence bearing on your complaint, such as notes, minutes, letters, or check stubs, etc., and have them ready when the investigator named below meets with you. It will be helpful for you to write down a brief factual account of what happened and to prepare a list of the names, addresses, and telephone numbers of the potential witnesses, together with a brief summary of what each witness should know.

You are expected to cooperate in the investigation of your complaint and failure to do so may cause your complaint to be dismissed.

Sincerely,



Teri M. Wigger  
Assistant Regional Administrator

Dennis Vamvakas  
U.S. Department of Labor-OSHA  
201 Varick Street-Room 670  
New York, NY 10014  
Telephone: 212-337-2332  
Fax: 212-337-2332  
Vamvakas.Dennis@dol.gov

Enclosure: Designation of Representative

NEW YORK CITY TRANSIT  
OPERATIONS SUPPORT  
-2 MAR 2015 16 18  
SERVICE DELIVERY



## News

### More about Underground spaces

Fri, 12/09/2011 - 4:11pm

**A HUGE, UN-TAPPED, ALMOST COST-FREE ALTERNATIVE THAT IS BEING SQUANDERED!**

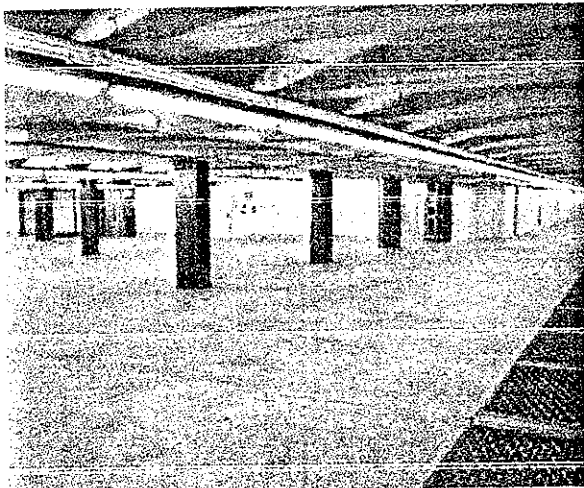
As we stated in the Real Estate Crazy article, one of the victims of the "mad dash to 2 Broadway" were the many underground offices and crew quarters that have been built over the years, only to be abandoned during the big move to 2 Broadway.



There's still time to block the 370 Jay give-away! Call City Comptroller John Liu at 212-669-3916.



Call State Comptroller Tom DiNapoli at 518-474-4044 and tell him: Stop the give-away of the MTA's 370 Jay Street asset.



SUPPORTS OUR FIGHT!  
CLICK HERE AND SIGN THE  
PETITION TODAY!

## Money Thrown Away

READ MORE →

### Exposed: The MTA's Untapped Real Estate Resource



Mon, 06/18/2012 - 1:07pm

When the MTA headquarters building at 370 Jay Street was 95% emptied in 2005 (during the mad dash to occupy and justify 2 Broadway), let's not forget that the 130 Livingston building – just a few blocks away in downtown Brooklyn – was also emptied of at least 60-70% of its personnel. This 60-70% represents 275-320,000 sq ft. of prime office space that is not being utilized.

In the rush to occupy 2 Broadway and justify its titanic lease payments, hundreds of thousands of square feet of real estate the MTA owned was abandoned. Our original argument was that the MTA could save the \$2.3 billion that remained on the lease of 2 Broadway by moving out and subleasing the space. The way we originally proposed to do this was to restore 370 Jay Street and utilize that space, and move back into the 130 Livingston Plaza space that had been abandoned.

Now that it appears we are losing 370 Jay Street, has our argument changed? No, it has not! Our original concept remains the same. There are other places to go for the MTA. Even if Jay Street is no longer on the table with its 540,000 sq. ft., we have found that much space and more! Time to revisit our underground spaces story!

[READ MORE →](#)[Add new comment](#)

## MTA -- Not So Fast!

Wed, 05/02/2012 - 1:15pm

TWU Local 100 President John Samuelsen tells the MTA Board what's wrong with the giveaway of 370 Jay:

[Add new comment](#)

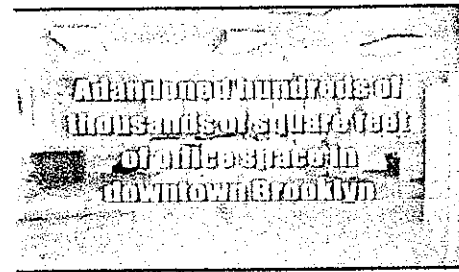
## After the NYU-Bloomberg-MTA Love Fest

Fri, 05/18/2012 - 2:34pm

By now everyone has read of the Mayors quickie press conference to give away the 370 Jay street Building to NYU. On April 23, the mayor had a rushed press conference that all of the local media were somehow invited to. He rolled out all the stops and had quite a cast in his little show. He had Brooklyn Borough President Marty Markowitz; City Council speaker Christine Quinn; NYC Transit President Prendergast; State Senator Dan Squadron; NYU President John Sexton; Senator Charles Schumer, etc., all patting themselves on the back, congratulating each other and talking about what a great



NYU President John Sexton high fiving after the deal went through



Upload your documents anonymously\*

Choose File no file selected  
Maximum Filesize: 5 MB

0 :

### Optional Info

Name:

Email:

### Address

Street:

Additional:

City:

State/Province:

Postal code:

### CAPTCHA

Please type the letters and numbers you see below. It is not case sensitive.

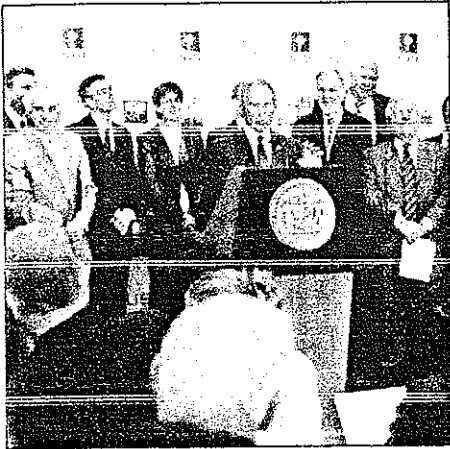
What is the first letter in the word "leak.": \*

Fill in the blank

\*To help protect your anonymity, we will erase any record of your IP address from our servers. To prevent your own Internet Service Provider from tracking your IP address, you may be interested in Tor anonymizing software. Any document that contains information that could be used to trace the source of the document will not be revealed by

deal this is for the people of the city of New York.

TWU Local 100.



But let's take a look at what really happened here...

[READ MORE →](#)

[Add new comment](#)

## Real Estate Craziness: The 2 Broadway story

Wed, 12/14/2011 - 1:15pm

Recently, the MTA lost out on an opportunity to SAVE almost 2.3 billion dollars, thus avoiding MTA service cuts and preserving the fare. Why would the MTA do this? To understand this topic, we must delve into the the 2 Broadway story and the VERY strange and slimy world of MTA real estate. Read on.

Video Image



[READ MORE →](#)

[Add new comment](#)

## RE-OCCUPY JAY STREET!!

Tue, 12/13/2011 - 11:28am

The MTA Real Estate Departments whimsical and clueless ideas about underground spaces

This is a nice idea but... not very practical underground

This would make a great place for a maintainer's reporting quarters but...A Disco? ...Really?

More stories about corruption during the renovation of the 2 Broadway building debacle:

MTA Infiltrated by the Mob

Settle Two Suits in MTA Cost Overruns

Top five botched real estate deals

State Comptrollers Report 2004

Transportation Security

Wiseguy admits fleecing the MTA

MTA Officials Fired In Bribery Inquiry

MTA 10M Con

MTA Chairman Blocked Inquiries

Law Firm Got Big Fees

MTA and Landlord Fighting over 2 Broadway

MTA - \$1 billion real estate assets?

NY1:  
MTA not maximizing real estate potential

State Comptrollers report

This story was written before the April 25 2012 vote by the MTA board to give away 370 Jay St, a very valuable public asset. We are leaving the story up to remind everyone of the clueless way in which the MTA wastes money.



**370**  
Jay Street is an office building that the MTA leases from the city for a dollar a year. That's right, ONE DOLLAR! Right now it is the site of a massive misinformation campaign by the MTA and much of the New York media. The building is supposed to be "deteriorated" and "an eyesore." The facts are quite different....

[READ MORE →](#)

## Another reason not to sell the 370 Jay Street building

Thu, 12/22/2011 - 3:36pm

This story was written before the April 25 2012 MTA board vote to give away the 370 Jay St building, a very valuable public asset. We have left this story up as a reminder of the clueless way in which the MTA wastes money.

When the Building at 370 Jay Street was built in 1950, it was "custom built" to be the "Transportation Building". Because of this there are many interesting features built into the design of the building. For example...most people don't know that the majority of the first and second floor, and even a few of the subfloors, of the building are a huge revenue collection facility! This is evidenced by two huge garage doors facing Willoughby Street. This outside entrance is for armored trucks to drop off revenue that must be collected at street level. But underneath the building there are many special tunnels that were built for...the MONEY TRAIN! Yes, that's right! The infamous "money train!"

2010

More stories beating the drum about the Jay Street "eyesore", leading up to the building sale;

370 Jay Street Ignored

Give us MTA's Jay St. eyesore!

Lhota's comments on 370 Jay MTA

Finally Parting w/ unused Building

Why does MTA continue to rent 370 jay street? ( note: nowhere does the author state that the rent is one dollar a year)

POLs: Lease 370 Jay

Jay

St. paint chip disaster MTA finally gives up Jay St. ghost

347 Madison Avenue stories

MTA looking to sell 347 Madison

MTA could sell buildings MTA's home for sale




[READ MORE →](#)

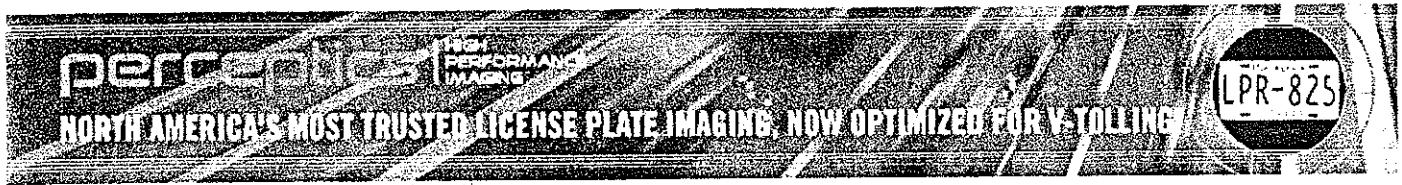
## MTA Real Estate for Sale?

Fri, 02/17/2012 - 12:32pm

After reading a few of these stories it becomes obvious that the MTA's real estate plan is completely out of control. They routinely rent or lease spaces, from private entities, that they don't need. At the same time they have hundreds of thousands of square feet that they own, that are not used, abandoned and left to fall into neglect. This plan may be good for the private real estate entities that rent to the MTA but it is a disaster for the riders and taxpayers that must foot the bill.


[READ MORE →](#)
[Add new comment](#)

## TOLLROADSnews



# NY MTA infiltrated by the Mob - lost tens of millions to organized crime

September 16, 2004  
By Peter Samuel

New York's  
premier  
transit and  
toll agency the

2 Broadway, the MTA building whose renovation was managed by mobster Frederick Contini and has cost \$450m versus a forecast \$145m.

2 Broadway, the MTA building whose renovation was managed by mobster Frederick Contini and has cost \$450m versus a forecast \$145m.

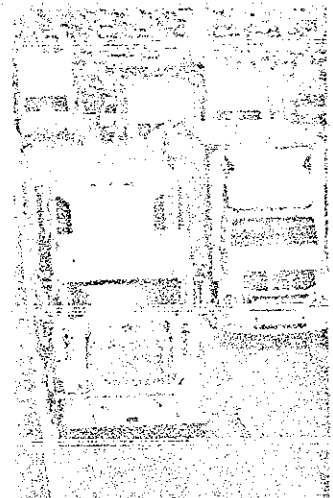
MTA's reputation in New York has also been damaged by an accounting scheme which made its finances look bleaker when it was going for toll and fare increases - cartoon by Dom Nunziato in Queenspress.

MTA's reputation in New York has also been damaged by an accounting scheme which made its finances look bleaker when it was going for toll and fare increases - cartoon by Dom Nunziato in Queenspress.

We make  
commercial fleet  
tolling painless.

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- \* Guaranteed payments
- \* Aggregated Dispute Processing
- \* Automated vehicle/plate updates

**FTT  
BESTPASS**  
Own the Road. For Less.



Ad

Metropolitan Transportation Authority (MTA) has lost tens of millions of dollars to the Mob in a slowly unfolding scandal over mismanagement of its new headquarters office building at 2 Broadway. Federal prosecutors yesterday released an indictment for racketeering against Edward Garafola, a leading figure in

the public purse violated that duty by pocketing hundreds of thousands of dollars to allow corrupt contractors to steal millions. While we may never know exactly how much money was stolen from the MTA, the investigation revealed that one plumbing contractor alone, generated approximately \$9.3 million in fraudulent labor charges, inflated invoices for materials, and cash generating schemes to renovate his house, purchase jewelry, furniture and stock and evade taxes."

Figliola plumbing, a Mob favored contractor got away with billing the MTA as if it paid laborers on the 2 Broadway job and on other jobs for MTA \$65/hour when company records showed actual pay was in the range \$8 to \$20/hr. There was also continuing money laundering, inflation of invoices and other schemes to bilk the agency.

Mogenthau's indictment said: "The investigation revealed that the crimes committed by the Figliolas and their company were made possible because the MTA officials charged with overseeing and policing of the contracts were bribed and rewarded to permit the fraudulent labor charges, inflated materials invoices, false filings and the other cash generating schemes. Howard Weissman, the MTA's Director of Facility Operation and Support was the principal official involved. The investigation revealed that he was bribed with cash payments, jewelry and free trips totaling approximately \$550,000. Ronald Allan, the MTA's Facilities Manager and Weissman's chief advisor, received bribes totaling approximately \$65,000. MTA building manager Gary Weissbard received benefits and rewards totaling approximately \$10,000."

They are charged with enterprise corruption, grand larceny, bribe taking, falsification of records, fraud, and obstruction.

No staff of the Bridges and Tunnels division of the MTA, or Triborough Bridge and Tunnel Authority as it is legally constituted, have been accused of any involvement in the Contini-led wrongdoing.

The MTA's reputation has been further sullied in the past year by charges that it rigged its books by moving expenditures between years in order to present a stronger justification to the public for toll and fare increases.

**BACKGROUND:** MTA's Bridges and Tunnels division runs the highest grossing toll operation in the US. The facilities include the Verrazano Narrows Bridge, the Brooklyn Battery Tunnel, the Queens Midtown Tunnel, the Bronx Whitestone Bridge, the Triborough Bridge, the Throgs Neck Bridge and several other smaller crossings. The toll operation is highly profitable and the division is regarded as a cash cow for helping bail out the transit side. Last year the MTA raised \$1,022m in tolls and \$3206m in transit fares for total revenues of \$4553m. It had costs of \$7580m due to massive losses on transit, and received subsidies of \$2384m from taxpayers.

A New York state agency MTA owns 8,500 rail transit cars, and 5,000 buses, employs 64,000 people, supports 7.8m transit trips daily, and does 800k toll collections per day. Its board of directors are nominated by the state governor, some on the advice of mayors and county officials, and have to be confirmed by the state Senate. MTA's activities are entirely "downstate" - in the New York City metro area. TOLLROADSnews 2004-

the Gambino Mafia group in which then MTA project manager Frederick Contini admits to having been a long time Gambino crime family "associate" and to having managed the 2 Broadway project on behalf of the Mob family while MTA project manager. Contini has pled guilty to making massive weekly "tribute" payments to the Mob, engaging in rigged contracts, and committing extortion while managing the MTA project.

Contini who is now cooperating with the feds is expected to testify that he made weekly "tribute" payments to his Mafia bosses of \$12,500 throughout the MTA building renovation project. Contini is charged with a variety of other crimes.

According to the federal indictment revealed yesterday Contini has confessed to having done a string of building redevelopments in New York City and northern New Jersey on behalf of the Mafia since 1989, while purporting to work for the building owners.

A Laborers International Union official Junior Campbell and Richard Calabro, a brother in law of Garafola were indicted along with Garafola on labor racketeering charges on the 2 Broadway job. Garafola is already facing charges of murder and attempted murder. He is charged with murdering a Staten Island Businessman in 1989 and with an aborted plot to kill the Mafia turncoat Salvatore Gravano whose testimony for the government put Mafia chief John Gotti in jail for life.

Contini has already been convicted of fraud in the 2 Broadway case. He was arrested once after an incident at a restaurant in which he allegedly smashed a glass in the face of another patron. He also has drunk driving convictions including one in the Port Authority's Holland Tunnel when he wrecked his car driving into the curb in the tunnel.

Contini first got involved in 2 Broadway when he was hired by the building's owner Tapir (Tommy) Sapir. After Contini was put in charge of managing the renovation of the building on behalf of its recently signed longterm tenant, the MTA, Sapir turned hostile to Contini and fired him. He told MTA officials Contini was a "thief." The MTA responded by putting Contini on their payroll as their manager for the 2 Broadway job.

### **Contini got award in 1999**

Early in the project Contini was named "1999 Developer of the Year" for his supposed outstanding management of the project at the MTA. (Amazingly Contini failed to get an IBTTA Toll Excellence Award that year. He can't have applied!)

Originally quoted to cost \$145m the 2 Broadway renovation cost the MTA over \$450m under Contini. He lost his job with the MTA early 2002, when one of his many malfeasances was exposed by audit staff at the authority, and the larger criminal scheme began to emerge. Then in Dec 2002 a longtime MTA senior officer and head of facilities operations Howard Weissman and his deputy were suddenly fired. A year later they and another MTA officer were hit with a 116 count indictment, which says quoting the New York County District Attorney Robert Morgenthau "(they) were engaged in a criminal enterprise, denominated the 'Figliola Group,' for the purpose of stealing millions of dollars from the MTA through a variety of schemes, including inflating invoices for materials, violating prevailing wage requirements, money laundering, falsifying and forging business records filed with the MTA and evading taxes... The officials whose duty it was to protect

**Addresses, Defendants 15-cv-1481(ENV/LB)**

New York City Transit Authority, 130 Livingston Street  
Brooklyn NY 11201

Kristen Nolan 130 Livingston Street  
Brooklyn, NY 11201

Leonard Akselrod 2 Broadway  
New York, NY 10004

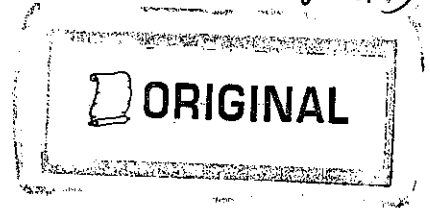
NYP Holdings, Inc. dab New York Post 1211 Avenue of the Americas  
New York, NY 10036

Kathianne Boniello 1211 Avenue of the Americas  
New York, NY 10036

15-CV-1481 (ENV-LB)

JUNE 29, 2015

BRIAN BURKE PRO SE PLAINTIFF  
145 EAST 23RD STREET #402  
NEW YORK, NY 10010



TO THE COURT:

TO THE HONORABLE COURT, ATTACHED IS PAGES  
39, 40, 41, 42, 43, 44 OF AMENDED COMPLAINT FILED  
ON 06/26/15 AND AFFIRMATION OF SERVICE  
TO DEFENDANT NYCLA FOR THE SAME PAGES

FILED  
CLERK  
2015 JUN 29 PM 4:14  
U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK



1 and careers of operating Civil Servants, not to  
2 mention the public. We know why the Authority  
3 retaliated against this whistleblower but why  
4 endanger the public? Primarily two reasons (1)  
5 There can be no witnesses. Conductors and Train  
6 Operators can, and have been terminated for  
7 allowing unauthorized personnel in the cab, as  
8 anyone in the cab is a potential distraction and  
9 presumptively unsafe. (2) No recordings. Operating  
10 personnel are affirmatively barred from using any  
11 "electronic device" while operating. Thus to record  
12 any attack while operating would itself be a  
13 termination offense. So we now have the infamous he  
14 said/she said dissonance. If the harassing  
15 supervisors, acting on management  
16 direction/protection, told the truth they would be  
17 fired on the spot. So they 'testily'. Let us go to  
18 management's version of what happened (see again,  
19 by reference, WCB transcripts possessed by  
20 defendant). Ms. Nolan on Friday April 11, 2014 at a  
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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 39

1 PERB settlement conference was told that 3  
2 Affidavits she submitted may have been suborned.  
3  
4 Apparently she agreed as on the following workday  
5 she called in her favors with management and set  
6 about successfully separating Complainant from his  
7 livelihood and into treatment for medical maladies  
8 caused by said campaign of terror. Please see again  
9 'IG Letter'. The Subornation of the 3 Affidavits is  
10 being investigated by the Kings County DA, in  
11 cooperation with TWU Local 100. The 3 TSS's that  
12 terrorized the Plaintiff on Tuesday, April, 15,  
13 2014 testified at several WBC hearings in 2014.  
14  
15 They lied not only about not harassing or  
16 assaulting the injured party but on provable  
17 deliberate misstatements. For example, all three  
18 stated that they were standing 3 feet away while  
19 contradictorily stating they were viewing the track  
20 and approaching signals. At 3 feet away the view is  
21 blocked by the bulkhead, as the suborning attorney  
22 did not know. One TSS stated he was 3 inches away  
23  
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AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 40



1 (correct) and then cued by NYCTA counsel changed  
2 that to the "3 feet" perjury. In an attempt to  
3 mitigate the crime, one TSS stated, under oath,  
4 that Petitioner, or in fact any Train Operator, was  
5 allowed to expel or bar them from the operating  
6 cab. This was brutally contradicted by the TSS that  
7 endangered the complainant (and the public) the  
8 most by the ferocity of his attack, TSS Daley. So  
9 why would the 5 TSS's perform management's bidding  
10 and instruction to harass and terrorize a Motorman  
11 while he is operating a train? Consideration. The  
12 next promotion from TSS is Deputy Superintendent, a  
13 managing title not subject to Civil Service law or  
14 procedure. No team player, no promotion. Of course,  
15 TSS's can themselves be harassed by management,  
16 even if they do not seek promotion, via job  
17 assignments etc., or even be demoted if still on  
18 their unlawful 2 year promotion (see IG Letter).  
19  
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26 **NORMAL PROCEDURE**

27  
28 AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 41

1 A neutral fact finding body may ask, "What is the  
2 procedure if a complaint, deliberately incorrect or  
3 not, is received by management?" Occasionally, safety  
4 complaints are made by passengers or employees.  
5 Depending on the nature of the complaint, it is either  
6 ignored or investigated by one's assigned TSS. Every  
7 TSS has aprox 30 hourlies assigned to them and any  
8 investigation regarding those thirty is put to them.  
9 But not in this case. Why? Because Mr. Greaves,  
10 Petitioner's assigned TSS, would not perform the  
11 necessary terroristic hostile acts. Simple. TSS Greaves  
12 was available and on the clock on both April 14 and 15<sup>th</sup>  
13 2014, the dates of the concerted adverse job actions,  
14 and was not contacted by management to investigate. TSS  
15 Greaves was called by the Department of Law to testify  
16 at a WCB hearing and when the Authority Counsel saw his  
17 testimony would be inculpatory to their case he was  
18 sent home and an adjournment was requested. When are  
19 complaints not even investigated? When they involve  
20 allegations of unsafe train operation by someone who

21 AMENDED COMPLAINT AND AFFIRMATION

22 JURY TRIAL DEMAND - 42

1 never saw the person operate, such as the malicious  
2 complaint by Ms. Nolan. There is a procedure to catch  
3 safety violations by operating personnel, complaint or  
4 no complaint, malicious or not. They are called  
5 "Efficiency Tests" and are regularly performed to catch  
6 unsafe operation. Petitioner has a 24 page directive  
7 which will be entered as an exhibit if Defendant does  
8 not acknowledge their violation of this procedure.  
9 Initially, all 5 TSSs comported with the standard  
10 operating procedure (SOP) in observing Petitioner in  
11 entering and stopping at boarding stations. They  
12 acknowledged observing Complainant, as always, in  
13 compliance with all safety bulletins and rules. The SOP  
14 is to then wait for the next train and do an identical  
15 observation. Instead, in violation of over a 100 years  
16 of precedent regarding safe train operation, all five,  
17 over the course of two days, in an escalating manor,  
18 instituted their 'hostile workplace' on this bizarre  
19 flimsy 'pretext' immediately after it was proven false.  
20 There was no legitimate reason for any of the 5 to  
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28

AMENDED COMPLAINT AND AFFIRMATION

JURY TRIAL DEMAND - 43

1 enter the operating cab and interfere with safe train  
2 operation, endangering the Public, contractors and  
3 employees. Mr. Akselrod was asked, under oath, if he  
4 ever ordered similar treatment on another employee. He  
5 answered in the negative. Management would love to  
6 expand on this newfound 'management prerogative' to rid  
7 themselves of all actual, or potential, whistleblowers  
8 and if it endangers millions of passengers and tens of  
9 thousands of employees, so what? "By any means  
10 necessary", "Do as thou wilt" and finally, "Power  
11 corrupts....<sup>32</sup>". Petitioner pleads to this neutral fact  
12 finding body to end this criminality.

#### 13 PREDICATE ACTS

14 As to the predicate acts for federal and state  
15 RICO, please review attached exhibit 3  
16 "MTAMONEYTHROWNAWAY". This information was disclosed to  
17 the Authority at previous 50-h hearing. Also see  
18 allegations of Obstruction of Justice regarding the  
19 river of Subornation. "MTAMONEYTHROWNAWAY" involves

20  
21  
22  
23  
24  
25  
26  
27  
28 <sup>32</sup> "Power tends to corrupt and absolute power corrupts  
absolutely." John Dalberg-Acton, 1st Baron Acton

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

2015 JUN 29 PM 2:16

RECEIVED  
CLAIMS PROCESSING

BRIAN BURKE

Plaintiff,

Affirmation of Service

-against-

NEW YORK CITY TRANSIT AUTHORITY, NYP  
HOLDINGS INC., KRISTEN NOLAN, LEONARD  
AKSELROD, JOHN/JANE DOE, ET AL.

15 CV 1481 ( ENV )

Defendant.

I, BRIAN BURKE, declare under penalty of perjury that I have

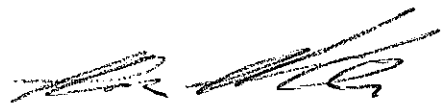
served a copy of the attached PAGES 39,40,41,42,43 FROM AMENDED COMPLAINT

upon DANIEL CHIU, ESQ, COUNSEL FOR NYCTA

whose address is: 130 LIVINGSTON STREET, FLOOR 12 BROOKLYN, NY 11201

Dated: 6/29/15

BROOKLYN, New York

  
Signature

145 EAST 23RD STREET APT 4R

Address

NEW YORK, NY 10010

City, State, Zip Code

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★FILED★

2015 JUN 26 PM 8:28

Brian Burke

CLERK  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK



Plaintiff,

Affirmation of Service

-against-

New York City Transit Authority, NYP Holdings, Inc.,  
Kristen Nolan, esq., Leonard Akselrod, Kathianne  
Boniello, John/Jane Doe, Et Al.

15 CV1481 ( ENV )

Defendant.

I, BRIAN BURKE, declare under penalty of perjury that I have  
served a copy of the attached AMENDED COMPLAINT AND AFFIRMATION AND EXHIBITS

upon NYCTA ATTORNEY DANIEL CHIU, ESQ. BY CERTIFIED USPS MAIL # 9505 5000 5177 0002 10

whose address is: 130 LIVINGSTON STREET FLOOR 12, BROOKLYN, NEW YORK 11201

Dated: 6/26/15

NEW YORK, New York

  
Signature

145 EAST 23RD STREET, #4R

Address

NEW YORK, NY 10010

City, State, Zip Code